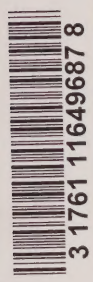


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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO

CHAIRMAN: J. STEFAN DUPRE, Ph.D.

COMMISSIONERS: J. FRASER MUSTARD, M.D.

ROBERT UFFEN, Ph.D. P.Eng., F.R.S.C.


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APPEARANCES:

Mr. D. Starkman	Asbestos Victims of North America
Mr. N. McCombie	Injured Workers Consultants
Mr. T. Lederer	Government of Ontario

180 Dundas Street
Toronto, Ontario
Tuesday,
June 15, 1982
9:00 a.m. Session

VOLUME 40 A



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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO
VOLUME 40 A

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THE FURTHER PROCEEDINGS OF THIS INQUIRY
RESUMED PURSUANT TO ADJOURNMENT

APPEARANCES AS HERETOFORE NOTED

DR. DUPRE: Good morning, ladies and gentlemen.
We shall now come to order.

Our witness this morning is Mr. Robert Sass, the
Associate Deputy Minister of Labour of the Government of
Saskatchewan.

Mr. Sass, may I assure you, sir, that you are
very, very welcome indeed this morning.

Miss Kahn, would you swear in the witness, please?

ROBERT SASS, SWORN

EXAMINATION-IN-CHIEF BY MR. LASKIN

Q. Mr. Sass, could you just help us by describing
briefly your educational background and your employment background?

A. Yes. I have a B.A. in English literature in
philosophy from City University of New York. I have a graduate
degree in industrial relations from Cornell University, with an

5 A. (cont'd.) emphasis in labour law, collective bargaining and labour movements, and have taught personnel administration and industrial relations at the University of Regina.

I am presently the Associate Deputy Minister of Labour and Director of Occupational Health and Safety, Department of Labour, in Saskatchewan.

10 Q. How long have you held that position?

A. Since late 1973.

Q. You report to a deputy minister or directly to the minister?

A. I report to a minister.

Q. The minister of labour?

15 A. Yes, I do.

Q. You have been good enough to prepare some opening remarks, I believe, for this Commission, and I wonder if I might ask you to speak to those remarks, and then I'm sure all of us will have some questioning afterwards.

20 A. Do you want me to speak to it, or to read the paper?

Q. Whatever is easier.

A. Well, maybe I can present a copy to the Chairman.

25 MR. LASKIN: We will, ultimately, Mr. Chairman, get copies for everybody, but let's for our own purposes call that tab twenty-four of what is now exhibit fifty-five, which is Mr. Sass's compendium of articles.

EXHIBIT # 55, TAB 24: The abovementioned document was then produced and marked.

30 THE WITNESS: This is just brief introductory remarks regarding the Saskatchewan approach to the regulation of

THE WITNESS: (cont'd.) asbestos.

5 Differing approaches to the regulation of asbestos can be thought of as centering on one basic question - to accept or reject limit of exposure. In particular, the approach of the federal government is to limit asbestos levels to two fibers per cubic centimeter of air. On the other hand, the Saskatchewan Occupational Health and Safety branch enforces requirements, not limits.

10 That is, we require remedial actions and control measures to reduce exposure close to zero.

The former minister received a document entitled, quote: "Current Approach to the Regulation of Asbestos in Canada", end quote, from the Honorable Herb Gray, Federal Minister of Industry, Trade and Commerce, and Regional Occupational Expansion.

15 The document was prepared by the federal/provincial working group on asbestos. Mr. Gray stated that he had received support for this document from the other federal ministers involved in the matter of asbestos regulation, and from a number of provinces.

20 The federal position can be summarized in the following excerpt from this document, and I quote:

"Existing Canadian regulations concerned with occupational exposure to asbestos dust require that atmospheric contamination within the work-place be limited to a time-weighted average of two fibers, or less, per cubic centimeter of air."

25 The federal report views the two fiber standard as adequately protective against asbestosis. It states that:

"The issue of a safe exposure with respect to cancers is still a matter of scientific controversy."

30 Saskatchewan has had asbestos regulations in effect since 1975. These were reviewed and re-enacted without major

THE WITNESS: (cont'd.) change, in 1981. These established a high degree of worker protection through a combination of engineering and work practice controls - the use of personal protective clothing and equipment, worker training, product labelling and a provision of confidential annual medical examinations.

In addition, asbestos is controlled under Section seventy-one, part 8 of the Occupational Health and General Regulations as a, quote, "hazardous chemical substance", end quote.

For such substances, no level of exposure is regarded as acceptable. Intake into the body must be prevented by engineering controls and personal protective equipment, and, whenever available, safer materials must be substituted.

Saskatchewan's view is that two fibers per cubic centimeter occupational standard does not afford an acceptable level of protection against cancers, particularly mesothelioma.

While the two FCC standard may at present be the best attainable for some asbestos operations, Saskatchewan does not endorse it for workers in our province.

Exposure to asbestos can cause two kinds of adverse health effects - fibrosis, asbestosis, that is, and cancer. Thus the question must be asked - does the two FCC standard address the fibrosis problem, the cancer problem, both of these or neither of these.

The meeting of the International Labour Office experts was held in December, 1973, on the safe use of asbestos. In a report on that meeting it was stated that a two FCC standard should be regarded only as an interim target concentration for the prevention of health risks of workers.

It was further stated that this standard can be applied only to the fibrosis-causing effects of the fibers, since

THE WITNESS: (cont'd.) no reliable standard has been developed for the cancer-causing effects.

5 The report further recommended, for the protection of workers' health, the suppression of injurious dust at the workplace - the use of protective clothing and respirators, and the collection of waste in sealed containers - so that it cannot pollute the environment.

10 It also stated, and I quote:

"Whatever standards of maximum dust exposure may be regarded as targets, the ultimate aim will always be the minimum possible amount of occupational exposure"...end quote.

15 Thus, according to the ILO, the two FCC standard is relevant only to the fibrosis problem, and not to the cancer problem, and even for fibrosis prevention it should be regarded only as an interim target concentration.

20 The U.S. National Institute for Occupational Safety and Health also recognizes that for asbestos as a carcinogen, no absolutely safe concentration can be established. Thus, the two FCC standard certainly does not provide adequate protection against some of the most serious health effects of asbestos - cancer of the bronchial tubes, cancer of the pleural surface, cancer of the abdominal cavity and cancers of other parts of the body.

25 While it is recognized that for asbestos as a carcinogen the general rule is 'the greater the exposure, the greater the risk', it might be asked, 'at what levels of exposure do documented cases of asbestos-caused cancer actually exist'?

30 A case report provides an answer to this question. I am referring to the Chen and Motet study of 1978.

5 THE WITNESS: (cont'd.) I shall not cite this study, since it is in the paper and can be read, and for the sake of time we'll pass over this study.

I would like to cite from NIOSH, from their Revised Recommended Asbestos Standard dated December, 1976, which supports the study of Chen and Motet, and they argue for a lowering of the standard to zero point one level.

10 The document states that, and I quote:

"The standard should be set at the lowest level detectible by available analytical techniques", end quote.

On this basis, they arrived at zero point one fibers CC recommendation.

15 The Saskatchewan approach places the emphasis not on what is detectible by analytical techniques, but on what is technically feasible for a given industry.

20 Of course, what is technically feasible for one industry may not be feasible for another. Therefore, in the branch's view, the value of a generalized TLV becomes very limited. It thus makes more sense to require provision of control measures based on what is technically feasible for the industry, rather than a limit on airborne contamination, and this is the Saskatchewan approach.

25 Of course, for the evaluation of the success of the control measures and for a rough measure of the risk, values derived from various authoritative institutions - NIOSH, the International Agency for Research on Cancer, the National Cancer Institute and the American Conference of Governmental Industrial Hygienists - are used as references as long as their limitations are recognized.

30 In their publication, documentation, of the TLV's

THE WITNESS: (cont'd.) fourth edition, 1980,
the ACGIH recommends lower exposure levels for crocidolite and
amosite than for other forms of asbestos, quote:

"Because of their greater potential for disease
production"...end quote.

They also admit that there is a, quote, "Lack of
accurate information of the dose/effect relationship pertaining
to these two types of asbestos", end quote, and that the
allowable levels they arrive at are arbitrary.

The Saskatchewan approach to the regulation of
asbestos has already been briefly outlined to the Royal Commission
by way of a letter from our senior occupational hygienist, George
Scattergood, dated March 3rd, and it is in the appendix of our
report to this Commission, but I would like to quote a number of
key sentences from this letter:

"Fiber counts alone are not considered a basis
on which corrective measures may or may not be
required.

Provided all reasonable engineering controls are
applied, no debris is evident and asbestos surfaces
are not friable, we consider a fiber concentration
of zero point zero two fiber CC or less satisfactory
in industrial environments. This is not to say,
however, that all tasks are maintained below this
level. On the other hand, control measures have
been enforced when airborne concentrations were
less than zero point zero two fibers CC.

There is no major user of asbestos in Saskatchewan
other than auto repair and construction. Asbestos-
related problems have mostly been associated with
the presence of sprayed insulation which has

THE WITNESS: (cont'd.) deteriorated to an extent that exposed friable surfaces are present.

Building demolition is seen as a difficult and serious problem."

That's end quote of the letter by Mr. Scattergood to your researcher.

A perusal of Part Eleven of Saskatchewan's Occupational Health and General Regulations, Asbestos, and Part Eight, the Chemical Substances, reveals in more detail what the Saskatchewan approach consists of.

Part Four, Occupational Health Committees, is also relevant because our approach to asbestos regulation depends very much on active committee involvement.

Part Eleven, section one zero nine of the Regulation states, and I quote:

"No crocidolite shall be used in any asbestos process"...end quote.

In Saskatchewan, we note with regret that the federal authorities have not yet banned crocidolite. In 1975, the federal government announced that it would ban importation of crocidolite, or blue asbestos. But in the June, 1981, draft of the current approach to the regulations of asbestos in Canada, it is stated only that, quote:

"The use of crocidolite has been banned by regulatory authorities in some provinces"...end quote.

Section 110 states:

"The spraying of insulation materials containing asbestos is prohibited".

In this regard, current approach to the regulation of asbestos in Canada states, quote:

"In the past, sprayed asbestos fiber has been

THE WITNESS: (cont'd.) "used for fireproofing
and other purposes, and subsequently has been
found to release fibers to the atmosphere.
This practice is no longer used in Canada."

End quote.

The fact that this practice is no longer used does
not, of course, address the widespread problem of the deterioration
of existing sprayed or other asbestos surfaces, or the problems
occurring when asbestos-containing buildings are renovated or
demolished.

Sections 111 and 112 make no reference to acceptable
asbestos dust levels, but simply describe engineering controls and
respiratory protective equipment and clothing.

Section 111 states in part, and I quote:

"Every employer shall, where it is practicable,
ensure that no asbestos process is carried out
without exhaust ventilation which prevents, so
far as is practicable, the dispersal into the air
of asbestos dust". End quote.

Section 112 states, in part, quote:

"Where it is not practicable to comply with section
111, the employer shall ensure that each worker who
may be exposed to asbestos dust is provided with, and
uses (a) approved respiratory protective equipment,
(b) protective coveralls and headgear which, when
worn, will exclude asbestos dust, and that protective
clothing shall be disposed of after use or shall be
kept, maintained and cleaned in a safe manner by
the employer, each time it is used." End quote.

The details of how these requirements are to be
met in a particular workplace will be worked out between the

THE WITNESS: (cont'd.) employer and the occupational health committee, with final approval resting with the occupational health and safety branch.

Section 113 deals with the cleaning of asbestos wastes. Such wastes must be, quote:

"...cleaned away promptly, and at least once each day, by vacuum cleaning equipment to prevent the escape of asbestos dust into the air, or where vacuum cleaning is not practicable, by wet method."

End quote.

Again, the criterion is the prevention of the escape of asbestos dust into the air, and no safe TLV is given.

Of course, the occupational health committee would have to be satisfied that cleanup methods and procedures were appropriate. Labelled receptacles for asbestos waste and the need for workers engaged in asbestos waste cleanup to wear personal protective equipment are also covered in this section.

Section 114 deals with the maintenance of asbestos surfaces, and is applicable to the widespread problem of deteriorating sprayed asbestos coatings on walls, ceilings, structures, etc. The wording being, and I quote:

"Every employer shall ensure that every asbestos surface is kept in good condition, and any repairs or sealing necessary to prevent the breaking off of asbestos, or the release of asbestos dust, is done immediately". End quote.

Again, no TLV's are mentioned.

In practice, visual inspection by the OHC committee member revealing a surface in broken or friable condition would be a typical first step in requiring an employer to comply with this section.

5 THE WITNESS: (cont'd.) Section 114 also deals with problems arising from the disturbing of asbestos surfaces for the purpose of maintenance, removal, etc., and with the necessity of screening off or otherwise enclosing an area in which an asbestos process such as maintenance, removal, etc., is being carried out.

10 Other sections of the Asbestos Regulations deal with the employers' duty to warn workers of the hazards of asbestos, the prohibition of miners working in asbestos dust areas, the placing of warning labels on asbestos materials, the disposal of asbestos waste and medical examinations for asbestos-process workers.

15 Part 8 of the Regulations deals with chemical substances. Appendix Four of these Regulations lists seventeen substances which have been proven to be potent human carcinogens. The manufacture, use or storage of these substances require written permission from the branch director.

20 Asbestos is also included in Appendix Four because, although it is a carcinogen, its use is so widespread that it would be impracticable to implement a permit procedure for it.

However, Section 71 in Part Eight of the Regulations applies to asbestos, which is included in Appendix Five.

Section 71 states, I quote:

25 "Where workers are required to handle, use or produce any chemical substances contained in Appendix Five, the employer shall ensure that adequate engineering controls and suitable personal protective equipment are provided to prevent intake of the chemical substance into the body". End quote.

The branch Guide to Compliance continues:

30 "While it is recognized that zero exposure will

THE WITNESS: (cont'd.) "not always be an
attainable objective, all possible precautionary
measures should be used to prevent intake of these
substances, including asbestos, into the body.
These may include any combination..."
and a list is set forth, isolation and so forth.

I won't read that into the record.

Section 72 in Part Eight of the Regulation states,
and I quote:

"Where there is present at any place of employment
any harmful chemical substance, the employer
shall take all practicable steps to prevent the
exposure of workers to these substances to any
extent likely to be harmful to their health."

End quote.

The above excerpts from our law simply is put into
the record to provide an overview of our approach to the
regulation of asbestos.

I have also enclosed a number of case studies
for the Commissioners to read, in terms of the actual enforcement
and the application of these regulations that I have cited.

Here one will find a corrective action has been
required where fiber counts were as low as zero point three fibers
CC.

There are three case studies in this report, in
terms of the application of these Regulations, since 1975.

In conclusion, I would hope that these examples
help to clarify our approach, and would like to reiterate that
our view is that the attempt to establish legislated TLV's
is not the most fruitful approach to the regulation of asbestos.
The trend over the years has been to lower recommended levels
more and more.

THE WITNESS: (cont'd.) As has already been mentioned, NIOSH no longer recommends two fibers per CC, but zero point one fiber per CC.

Other agencies still hold with two FCC limit, but all authoritative sources recognize that there is really no safe level for asbestos contamination.

The most fruitful approach, therefore, we believe, is to require remedial actions and control measures suitable to the industry in question.

We realize that levels of asbestos contamination which are considered unacceptable in Saskatchewan, for the industries we have in our province, might be considered acceptable for other industries which are found in other provinces - asbestos mining, for example.

Nevertheless, we recommend to other jurisdictions the Saskatchewan philosophy of enforcing requirements, not limits.

Thank you, Mr. Chairman.

DR. DUPRE: Thank you, indeed, Mr. Sass.

MR. LASKIN: Thank you, Mr. Chairman.

MR. LASKIN: Q. Mr. Sass, I wonder if we might just follow up on your talk, for which I thank you, and I just want to make sure I understand the overall regulation of chemicals in Saskatchewan, and I wonder if you could just take that thick book of publications which you gave us and if we could just go to tab thirteen, which is, as I understand it, the Regulations.

THE WITNESS: A. Yes.

Q. Can we go to page 109, which is the appendix? Now, as I understand it from looking at appendices four, five and six, there appear to be three different categories of chemicals for the purpose of regulation. Appendix Four, am I correct, are those lists of carcinogenic substances, as you call them, which cannot be used at all without permission?

A. That's correct.

Q. And they are there because they are not in widespread use, or they are more easily controlled by that method?

A. No, they are there because of its hazardous nature.

Q. All right. But you have indicated, for example, asbestos is also carcinogenic, but it doesn't find itself on Appendix Four?

A. Yes.

Q. So that is there some difference between the use of asbestos as opposed to the use of benzidine or the substances on Appendix Four, which warrant that different treatment?

A. Well, asbestos compared to any of those listed here is more widespread in its use, and of course in schools, public buildings, auditoriums, in the mid-fifties, a great amount of asbestos liquid spray was used as a retardant.

Now we find that after twenty-some-odd years it's decomposing and coming apart. So because of its widespread use, not only workers, but in public areas, there is a special regulation regarding asbestos.

Q. But, for example, something like vinyl chloride is on Appendix Four, I notice. It's a substance that you can't use without specific permission?

A. A permit, that's correct.

Q. Then asbestos is, of course, as you pointed out, on Appendix Five, and as I understand your talk, none of the substances listed on Appendix Five are subject to any kind of control limit or threshold limit value?

A. That's correct.

Q. Okay. But then we have Appendix Six, which the legislation, the Regulation, calls workplace contamination limits, which look to me like some kind of control limit or

Q. (cont'd.) threshold limit value for a large number of substances?

5 A. That's true. That's precisely correct, and there are three areas here. You're right.

Q. Can you help us as to why it is, for example, that I see something like mercury, which at least in our jurisdiction is looked at in the same way as asbestos, yet in your legislation I find it has a specific threshold limit value because it's in Appendix Six, but asbestos is in Appendix Five?

10 A. That's true. Maybe I could just give you some background to that, to explain this feature here.

From 1973 to about 1976, the policy of the Occupational Health Branch in regarding the enforcement was to apply Section Three of the Act, which ensures that an employer shall ensure, as far as is reasonable and practicable, a healthy and safe workplace.

15 We emphasize this feature as a terms of regulation in order to ensure or attempt to promote the activation of workers in occupational health and safety committees, so that the emphasis was where it was too loud, reduce it; too quick, slow it down; too much dust, lower it. If it was too low, up it; too high, lower it, on the basis that workers themselves were the best instruments.

20 Now this, in many ways, was counter to the rule of law where we have norms that are unequivocal, that are consensus, or universal, that require scientific evidence or some expertise in the establishment of it, and of course there are research areas and agencies, scientific institutions, to look into this area.

25 While this is important, and setting these limits are important, it doesn't go far enough in improving the workplace and taking in psychosocial questions, for instance, questions

5 A. (cont'd.) of stress, questions of speed or scheduling of work, monotony, boredom, the pace, authoritarianism in industry, and so on.

10 It had certain limitations, even though there was great value, it seems to me, in this area. But we also had the desire to activate workers and to the degree that we could remove a certain area of their function, or remove an area of function from the experts to workers as the best instruments, it would help promote activation of workers on committees so that the committees would be something more than simply just paper legislation.

15 In other words, it was simply...it was not enough simply to legislate joint occupational health and safety committees in law...without giving some powers and rights to committees, to help in trying to foster over long periods competence and skills for the activations of workers regarding the working conditions.

20 Now, at the same time we were confronted with a reality where a section of our labour movement desired standards like minimum wage, to use a parallel from the Labour Standards Act. They wanted some assurances. Governments are not forever, administrators are not forever, and so forth and so on. They wanted some assurances in areas of concern regarding chemicals and dust and thermal conditions, etc.

25 I think this was in part forced by certain trends that were across the country. Now, we compromised here and said, yes, we will have levels, but we will not have biological levels. So that the levels here are of workplace contamination limits. These are environmental standards, not biological standards, which of course would be measured by appropriate experts - blood tests, urine tests, sputum cytology, etc., so that we would not in one hand give workers the right to
30 monitor the workplace and on the other hand take it away by

5 A. (cont'd.) establishing standards which would minimize their role in this area. So we have set standards based on workplace contamination levels, so that workers can still monitor the workplace, so the actual instruments of monitoring - thermometers, wet bulb thermometers, noise level meters - would actually be in the hands of the workers on the committee regarding the environment.

10 At the same time, nothing prohibits us from enforcing better levels than even these workplace contamination limits under Section Three of our Act, if it is reasonable and practicable for us to do it in terms of force or the available technology.

15 Q. When you say environmental levels, do you mean by that these are area limits that...you don't require personal sampling, is that in essence what you are saying?

A. That's correct. These are not necessarily biological. These are environmental workplace contamination limits.

20 Q. And the whole theory, I take it, of personal sampling is rejected and...

25 A. Well, we don't reject any of these things. I mean, there are cases where...I mean, we don't have a principle of rejection. What we are trying to promote at the same time is the activation of workers on committees, and therefore we have to adjust our standard setting and our programs to foster this activity.

Q. Who determines which substances get on which appendix, and is the appendix reviewed from time to time, and if so, by whom?

30 A. Well, we have a medical unit where we have our senior biochemist, Dr. Thayer Colatta, plus our hygienist, George Scattergood, and specific researchers in the Occupational Health

5 A. (cont'd.) and Safety Branch, whose responsibility, collectively, is to stay on top of developments in the literature, and this is how we try to keep up to date on these matters.

Q. Is it those three gentlemen, essentially, who...

A. Areas, units, I should have said.

Q. Units who are responsible for...

10 A. For advising the director, who then advises the minister, or recommends to the minister, and if any changes are made it must be by order-in-council regarding regulations, so that of course is the cabinet decision.

Q. Is there any process for inviting comments or submissions from parties who may have an interest in...

15 A. Yes, we meet with the appropriate groups regarding these regulations - various trade groups, management groups, appropriate labour organizations - which have input into the regulations in terms of recommendations, and then we, of course, bring it forth to our minister.

20 Q. Is there any particular reason why, in addition to these appendices, asbestos, along with noise as I read your regulations, have been singled out for even further special treatment in your regulation? I mean, why those two and not...is this an ongoing process and you have just gotten to noise and asbestos?

25 A. Well, asbestos goes back to 1975, the Regulations. What I have quoted in my report to the Commission is from the 1975 Regulation on asbestos.

30 The Regulations regarding workplace contamination limits are 1977, and it's simply a development in the regulatory process, and to try to keep these things up to date and I think it's just simply a result of the collective abilities of the staff as it presently exists - no more, no less than that.

Q. You regulated specifically with respect to noise, silica and asbestos...

A. Yes.

Q. ...and presumably in the future there may be other substances?

A. Well, the chemical substances regulation requires at each place of employment the employer and the committee or worker shall prepare a registry of chemicals, of all the chemicals used in the work process. We will see what emerges from that registry, because that will be made available to the workers, it will be available at each place of work, and we will have access to it.

And we hope out of that process that the skills of the committees to put together these registries, and the information we get and the reporting of what is not known will help us (1) activate workers in this area in which they have over the years been excluded, and secondly, we will learn from that.

The noise question, like asbestos, seems to be just on the face, was obvious. In other words, it needs correction right off. It's a major problem in our industries, and we have been slowly getting at the idea of beginning to control and moving into this area.

Now, we've highlighted that in a book form, to be circulated to all committees and workplaces, because there is a cost involved in reducing unwanted sound, and we want it on record in terms of long-term financial planning that we have to begin to put aside the monies to reduce the noise.

Unfortunately, our regulations or all TLV's are frozen numbers. They are frozen, which means that while a regulatory agency can seek compliance or enforcement in bringing down the amount of unwanted noise, or even in concentration of

A. (cont'd.) dust, it also implies that the employer can go up to it, that that, too, is acceptable.

Now, the argument in part, in allowing this kind of concept, I think on the whole is based on economic considerations. It costs money to better your working environment, and it costs money to improve ventilation, increase lighting and so on.

Well, okay. May I use the blackboard just to highlight this?

Okay, it costs money. I think I've made this clear, I don't think I would like to say publicly, because then it seems there is a tradeoff in terms of health and safety, but in fact there is.

So when you have a standard of two parts per million, or whatever, this number which is supposedly based on scientific evidence or the best studies available, implies for... I'm speaking as a bureaucrat now...implies that you can bring down the employer to this level, but it also implies that lack of vigilance in terms of maintenance, you can go up.

That also freezes worker activity, because the assessment of this is often in the hands of suitable appropriate professionals.

It would be more desirable to keep continuously bettering things, to go in this way. The problem is money. So I guess ideally I'll say at this point, why not say, okay, two parts per million in 1982, one part per million in 1984, point five, 1986. You see what I mean? Keep bringing it down.

This way, if you have time a factor, which is more suitable to realities of investment, long-term, short-term, for industry, and maybe the people will be less defensive and confess to the magnitude of the problem regarding occupational health if we built in an approach that enables us to admit

5 A. (cont'd.) that we have a serious problem out there, but because of the political, economic considerations we can devise a way of standard setting, over time, that includes considerations, financial considerations. This way, there can be efforts to have the engineering community seek technological control methods, you can begin to slowly plan, you can have research in an area that might not be done otherwise.

10 The same with PBC, where they were able to go from five hundred to point five without undoing the industry as argued in the lead-standard case in America.

Q. Okay. And it was in 1975, I take it, that the legislation banned crocidolite?

A. That's correct.

15 Q. Was there any particular evidence that your department or the government was relying upon to come to that judgement?

A. Well, we were relying on evidence available in 1975, that crocidolite, unlike the brown and the white, the amosite etc., was the most hazardous.

20 Q. Were there any particular studies that come to mind now, or any particular piece of evidence that you can recall?

25 A. Well, I don't recall the discussions in terms of specific evidence. I sat in on a discussion in 1974, on that, and at that time we were...we leaned toward some of the discussions that Dr. Selikoff and his people were citing, and I spent a week down at Mount Sinai in New York, and it appeared then that this was a larger problem. I think today our people are not convinced that it is larger than the others, that they are all equally large.

30 Q. The asbestos industry, I take it, in Saskatchewan, is fairly small?

5 A. The industry, yes. Not the use of asbestos in terms of construction of brake linings and so on, but in terms of the mining and processing it's nonexistent in our province, yes.

Q. Nonexistent?

A. That's correct. There is no asbestos industry to speak of.

10 Q. All right. And what...

A. We have no milling of asbestos, for instance, mining or manufacturing.

Q. What you have is its use in construction and brake linings, essentially?

15 A. That's right. And in public buildings, workplaces, and where you expect to find asbestos. That is the larger of the problems, yes.

Q. Can we turn to another aspect of the legislation, which is the worker refusal section - refusal to do unusually dangerous work, which I take it is Section 26 of the Statute?

20 A. That's correct.

Q. You are probably familiar with it, but for our purposes it's in tab twelve, at page eighteen.

This section came into the legislation when?

A. 1973.

25 Q. At the same time as joint committees?

A. No, no, it didn't.

Q. After?

A. One year later. The joint committees was in statute in 1972. The right to refuse was added in 1973.

30 Q. All right. It says, "A worker may refuse to do any particular act or series of acts at work which he has reasonable grounds to believe

Q. (cont'd.) "are unusually dangerous".

Does the ministry, does your department take the position that that is an objective or subjective test on the part of the worker?

A. Subjective.

Q. Subjective?

A. Yes. It's based on belief, not knowing.

Q. And if...

A. It's not an imminent danger.

Q. But it's based on the worker's own personal belief, not the belief of some reasonably-objective worker in the workplace?

A. I don't see those as mutually exclusive.

Q. Okay.

A. The answer would be yes to both.

Q. All right.

A. Which they are, good instruments for determining the shortcuts and the dangers.

Q. But if you had a particular worker who is more believing in dangers of the workplace than another, you, I take it, focus on the belief of the particular worker who exercises the right?

A. Yes, that's true.

Q. Okay. If he does so, what's the next stage? What happens?

A. Well, the worker would refuse until the occupational health and safety committee would evaluate the matter. That would be the next particular stage, as outlined in the law.

Q. Does the worker then have an obligation to consult, notify the occupational health and safety committee?

A. That's correct. He's refusing. He still

A. (cont'd.) does not do the work. The committee is then called in.

5 Q. Does the committee have some decision-making power with respect to that refusal?

A. Yes. They can make a judgement whether in fact the worker is correct or incorrect in his judgement.

Q. Is that binding on the worker?

10 A. No, he can still refuse until the OHO, the occupational health officer, comes in.

Q. All right. Let's...we go to the first stage, we go to the occupational health and safety committee. Does it make its judgement or decision, in any event, by majority rule?

A. No.

15 Q. Or must it be unanimous?

A. No. One person on that committee, who supports the worker, is enough.

20 Q. So that in other words, if one representative on that committee, however large or however small, says, Mr. Worker, you are justified in exercising your right to refuse, then he may lawfully continue to exercise his right to refuse?

A. That's correct.

Q. And he will be paid?

A. That's correct.

Q. By his employer?

25 A. Yes.

Q. All right. Suppose that happens, and suppose one member of the committee in fact does that. What obligation is there on the employer, or what can the employer do at that stage?

30 A. He can call in an officer, but the worker is still protected, of course.

Q. All right.

A. To make a judgement or to try to resolve the problem regarding the danger.

5 If, of course, there is some violation of the regulation, or there is a judgement on the OHO, the officer's part, that there is a danger, then he can give an order that it has to be corrected either (a) forthwith, (b) a period of time or whatever, but the worker can still refuse without reprimand, transfer or any form of discrimination that's outlined in the Act.

10 Q. When...at what stage in the process, if at all, does the worker's right to refuse come to an end?

A. The courts can only end that. Yes.

Q. What about you, as director?

15 A. Well, both the worker and the company can come to me, as director, and I, too, have a say in this matter.

But since 1973, all worker refusals have been upheld by myself. I would think the only recourse is the courts.

20 Q. So that when you say all have been upheld, then how, ultimately, does the situation get resolved? Something has to happen in the workplace.

A. Yes. The situation has to be corrected to the satisfaction of the worker who refused to do the job he believed to be dangerous.

25 Q. When you say all worker refusals have been upheld by you, is there some motivating principle or philosophy behind that, or is this a judgement on the particular merits of each particular work refusal?

A. It's a combination of things. I can't answer that one way or another.

30 On one hand, it would be desirable to uphold refusals so as they become institutionalized, so that this becomes more than paper legislation and refusals by workers, to

5 A. (cont'd.) protect themselves, become more, let's say acceptable and I would even say widespread. It would be desirable.

MR. LASKIN: Dr. Uffen has a question.

DR. UFFEN: Yes. I may have missed something here.

THE WITNESS: Yes.

10 DR. UFFEN: Are there any workers' refusals that don't get to you?

THE WITNESS: Oh, yes. Yes. Large numbers.

DR. UFFEN: So all refusals that have got to you...

THE WITNESS: I'm speaking of, of course.

15 DR. UFFEN: Is there any rough idea of what proportion of them would get settled before they ever got to you?

20 THE WITNESS: Well, now I would say ninety-nine percent of them, of course. But in the initial period there were appeals to the director. They do not appeal now, mainly because it's more widespread or desirous for them to resolve this problem on the shop-floor level.

MR. LASKIN: Q. What percentage get resolved in the hands of the joint committee?

25 THE WITNESS: A. We don't have any statistics on it because these are now so widespread, but I would say well into the ninety percent area, that are being dealt now.

A small percentage are, of course, well, the OHO's are called in. The nature of the problem...

Q. That's Occupational Health Officers?

30 A. Yes. And then, of course, there is myself in the final stage. But that now is a rare, rare occurrence.

Q. Is it also...it's also a rare occurrence that

Q. (cont'd.) the Occupational Health Officer is called in?

A. It's not rare. It's less.

Q. Over time?

A. That's correct. This is what's happening over the seven, eight year period.

Q. I take it the joint committee, as well as dealing with the particular refusal, has what is...can make recommendations as to corrective action and so on?

A. That's correct.

Q. It has no binding power with respect to corrective action?

A. That's correct. The failure to comply must be to an order of the OHO, under the Act. It's on that basis that employees can be prosecuted.

I should mention one thing. I didn't quite answer your question fully on the question of refusal, why backing up of the working is desirable and some effort is taken in this regard.

It's also been our experiences that abuses by workers, which I think is implied in your question, is what is so rare.

If there is or has been any abuse regarding this section of our law...and I know there is a great concern about it regarding my counterparts, representatives of industry...the abuse is the failure of workers to take advantage of this legislative right. That is really the problem or the short-coming of this particular clause.

Now, my opinion regarding the reason is that on the whole our workers in Saskatchewan are still fearful of using this right, on the basis that the power relations in industry are asymmetrical or unequal. That is, he who has the power to

5 A. (cont'd.) hire and fire is not quite equal,
in my province, to he or she who rents or sells their labour powers.
And this, of course, means that there is the feeling that a
refusal is still viewed as insubordination, and that the employer
can always 'getcha'...these are paraphrases of quotes...in other
words, through tardiness, through lateness, bad days and records
can be kept up, you know, so that the abuse on the whole is the
10 problem that workers don't really fully take advantage of this
particular piece of legislation because of the structure of
command of industry. That's the problem.

15 So shortcuts are still taken, and not too long
ago I visited a worker in General Hospital in Regina, who had
fallen eighty feet in the IMC mill, eighty feet, my God, and
lived. Yet we had Hans Eiler at the City Hall, fatality, fall
seven feet and was killed.

I went to visit the worker, who is all in cast
in Regina hospital, and we chatted for awhile and I asked him
what had happened.

20 Well, he went into an area in the mill where
you have to...he was a maintenance worker...and he wanted to
move the overhead crane from one end of the mill to the other.

25 In the center of the mill they were doing some
work and he had to climb up because the controls were too short,
so he had to go up, pass it over kind of thing, move it over,
come down and continue moving the crane, and in that process,
fell.

30 In talking to this worker he made it abundantly
clear that he knew he shouldn't have gone up there, there was
actually a sign, but he wanted the work to get done. He
didn't want to tie up everything, you know. Everybody would
have had to slow down as well.

And this is the cause of a large number of

5 A. (cont'd.) accidents - that workers take the shortcuts so that production, the production can go on, without slowing it down.

It's usually on behalf of production that these accidents take place.

10 Now, rights and legislation, and here's a worker that was familiar with this right. He had actually even heard me say, and he mentioned it, that this is a hard hat, don't view this as a piece of social legislation - use it as a hard hat. You have to wear this protective equipment.

And yet, in the course of trying to get the work done, the pressures of production, there was the abuse.

15 So I think one has to look ahead in terms of how you make this more than just paper.

I'm sorry, that was just a digression to indicate there is more the problem than the indolent worker. You know, it's like being poor because you are indolent or lazy...much of the same kind of thinking is also applied, I fear, in occupational health and safety.

20 Q. To what extent is the right exercised, not so much with respect to safety matters, but with respect to hazardous substances?

25 A. The first three or four years of gathering statistics in this area, based on minutes that come in from the committee to the branch, it was a much smaller percentage on health. There's no doubt that the overwhelming number of concerns in the committees were on safety.

30 What we are finding is, it's growing a bit in the health area, and we hope it will grow a little more because of our new chemical registry guide, because they would have to sit down and work it out, and hoping that this would also have an educational...be an educational factor in increasing the

A. (cont'd.) consciousness regarding substances.

Q. Do you have any examples in the asbestos field?

A. Yes, about 1980 and 1981.

Q. What...I mean without going into a lot of detail, what kind of situations?

A. Everything from, you know, whether it was asbestos that was coming off, or in the basements, around the boilers, to friable asbestos and so on, concern about it, whether it is asbestos and whether they were being properly protected, if so. These are generally concerns.

Then, of course, its unique in particular based on the industry, the work process and so on, and in this regard every industry is sort of its own culture. So committees also behave very differently in different industries...has its own personality or character.

Q. Can we talk for just a moment about your occupational health officers? I note that while the statutes, the Occupational Health and Safety Act, they are called occupational health officers, and is there something deliberate behind that language?

A. Well, I guess in 1972, there was a concern because of OSHA and the influence of the Occupational Safety and Health Administration in the States, spilling over into Canada, that there was a need to revamp our factory acts, which then generally dealt with safety matters, to health.

In part, I think, it was the environmentalist movement in America, in the sixties, Rachel Carson, The Silent Spring, the poisoning of air, foul water and so on, concern for the progeny in radiation and so on, the events leading up to the passage of OSHA...Dr. Selikoff and the whole question of asbestos, you know, mesothelioma and...so that there was a need to balance with our former inspectors concerned with safety

A. (cont'd.) the matters of our chemical society and the introduction of chemicals and so on.

5 So I think the question of health officers is merely sort of in tune with the times. You know, sort of a culturally-faddish, politically-acceptable kind of terminology that people were talking to correct an imbalance, or something of that nature.

I don't think there is anything more than that.

10 Q. What about training? Did you take your safety inspectors and give them health training, or did you try to find industrial hygienists or whatever?

A. Well, we did a bit of both. We beefed up the hygiene, of course, hired a physician at that time - Dr. Yoontin, who was a former medical factories inspector in Britain. 15 We put on staff a senior toxicologist that we hadn't had before.

Then, of course, we tried to integrate more closely with the inspectorate, the traditional safety inspectors, who came over from the Workmen's Compensation Board when we centralized all unit branches in the government that had anything 20 to do with workplace health and safety, within the Department of Labour.

Here, because of the small number of people and working together, we were hoping that things rub off.

See, our hygiene inspectors are also OHO's...as our safety people are, as myself. We can all go in workplaces 25 and write orders and can't be left out.

But we tried to integrate and hopefull this would be a process where people would feel more comfortable dealing with these matters, and these were primarily inhouse training.

30 Q. Is your inspectorate, insofar as health matters is concerned, is it trained basically to recognize

5 Q. (cont'd.) problems and then call in some specialist to propose corrective action, or are they also trained to propose the corrective action as well?

A. Well, I can't say they are...I don't want to link training to this behaviour. It sounds very A, B, C... that there is a kind of linear causality here. It depends on the inspector, too, you know, their confidence handling six syllable words and so on.

10 We have removed in 1973, late 1973, early 1974, the check list approach, where if they went into a meat packing plant they took a certain paper with them, you know, and they checked that off.

15 This, of course, was the way they dealt under the Workmen's Compensation Board, where they didn't have to go around the workplace with the worker or committee members.

Now, of course, with committees mandatory in all places of employment with ten or more workers, they have to go around with the committee, and where there is no committee, with a worker in that workplace, and to in part be guided.

20 The hope, of course, is...and I think this is what's happening...is that they need not have this check list. That where it's too loud, to reduce it. They can have judgements.

25 Where things are not smellable, tastable, feelable and all that kind of thing, then of course we have the hygiene unit for that. But on the whole, the mysteries are not invisible in our workplaces. Fumes and irritants, these are feelable, tastable, smellable, and they are not invisible, where you need specialists, in the overwhelming majority of cases.

30 So this is a matter that has to be worked out, depending on the workplace.

5 Q. Can we talk about joint committees for just a moment? One of the difficulties I was having, and it may be just my way of reading the legislation, was in terms of the appointment of these committees and trying to understand the statute, Section 24, and the Regulation, which is Section 19 in Part Four.

10 The statute seems to say that insofar as the worker representatives are concerned, that's the responsibility of the workers either through their union or election internally in the company?

A. They can be appointed either by the union, or elected by the workers. That's true.

Q. Okay. Can you just look at Section 19 of the Regulation for the moment?

15 A. That's Part Four?

Q. Yes, which is in tab thirteen.

A. Yes.

Q. As I read Section 19 (1), there seems to be some role vested in the employer...

A. Yes.

20 Q. ...in terms of arranging for worker representatives on the committee?

A. Well, the committee must be established by the employer. The employer must take the initiative, and to ensure that there is a committee. Failure to ensure that there is a committee in his workplace actually subjects him to the penalty section of our Act.

25 Q. All right. But Section 19, Subsection 1, only goes that far? It simply says that the employer has to initiate the process, but after that it's the worker...

A. Who selects.

30 Q. ...who selects?

A. That's correct.

Q. Okay.

5 A. You also must comply with meetings, with...
under Section 28 where any disclosure...if the workers desire
any information...I shall read that, Section 28, Subsection 2:

10 "Every employer shall ensure that the worker
representatives on the committee, or where there
is no committee the workers, are kept fully
informed of any information in the employer's
possession concerning the work environment and
the occupational health and safety of workers
at that place of employment."

15 The work environment includes any new technology,
machinery matters, and all things like that as well, on top of
occupational health and safety. So that there is a further
obligation on the employer other than simply just assuring
that there is a committee - appropriate posting of our information
on the rights of workers, etc., - as well.

20 Q. The Regulation, I take it, came in some time
after the Statute?

A. That's correct.

25 Q. One of the things that I observed about the
Regulation, at least in comparison with the kind of legislation
in place in our jurisdiction, is the amount of detail that goes
into the...that is in this Regulation in terms of duties and
responsibilities and so on, and was that born of some experience
of not having that kind of detailed, spelled-out regulatory
framework in the early years of the operation of the committees
under your legislation?

30 A. Yes. In 1974, through administrative
policies within the division, which we have some authority
in terms of administrative law, we began policies in terms of

A. (cont'd.) the functioning of the committees, to ensure activation, in terms of problems that would come up.

Then in 1977, we took all these policies and simply put them in law. Now we shall make new policies regarding this new law, and some day we will put that into law, so that we can keep opening, widening or deepening these rights or this procedure in law, so that there is some relationship in our own administration of it.

For instance, we had problems. There was one of our mines, we had difficulty. They wouldn't let off workers to take our two day training program, with pay.

Now, it's true we only had two or three incidents over the years. Now we made it in law that we have two days with pay...that workers have five days each year, so that the unions can have three of those days.

So in effect, where we've had problems, we now put it into regulation and then we will continue our policies and then we will work out the problems and put it into regulation, with, of course, the approval of the minister and cabinet. But we still have to interpret a great deal here, so the regulations that you have before you, committee and health regulations, at least those on the committee side were in fact policy and were in fact implemented in terms of use, prior to their actually being ordered in council.

Q. Now they have the force of legal sanctions behind them, is really what you are saying?

A. Yes.

Q. In terms of training, your branch offers a two day course?

A. For committees, yes.

Q. How often?

A. Well, it goes on every day, you know. We have

A. (cont'd.) a small staff.

5 Now, initially when we wrote the course, we had actually hoped that the respective trade unions would train the workers and so on, the committees, but the policy of the Federation of Labour is that the branch shall do the training of workers, so that we have undertaken the training of workers in a course on committee training program, which we call Better Working Environment, and we keep that up to date. The last revision
10 is, The Better Working Environment - 1981. It's a two day certificate course for committee members and other persons involved.

The first day, session one: occupational health organization, Saskatchewan law, general work environment, noise control.
15

Session two: chemical hazards, regulation review, ventilation and planning.

These are the eight sessions that make up the two days.

20 In this course we do not do what they do in Ontario, where they train workers to be more expert, so they begin with the anatomy, the nature of the body, how the ear works in terms of noise and so on, but more in terms of workers to act and committee members to act on the work environment without being, you know, restricted by articles and studies and so on - I mean, using their eyes, their ears, their nose and their mouth - to try
25 to better and to discuss and to open up these questions, you know. So they do learn what their rights are the first day, and then the second day we generally deal with the monitoring, the actual use of the monitoring equipment, and we have various guidelines that go along with the monitoring so that the workers would have some guide when it's too hot or too cold, in terms of time away,
30 you see, so that they can become better and more involved in the

5 A. (cont'd.) monitoring, and then we have our hygiene monitoring equipment - the different pieces of equipment that each inspector carries with him in an attache case - and he can leave either respective equipment or different equipment from the lab, with the committees for monitoring.

10 Of course, some they would have to do themselves, but this has been going on since 1974, and it's spelled out in detail in the booklet on Workplace Monitoring, that you have a copy of.

Q. How far does the monitoring go? If you are talking about asbestos in the workplace, does the worker monitoring go so far as to do air sampling or...

15 A. Well, they could send in, they could send in, as in schools, each superintendent in his district had to put in these little bags, he had to send them to our lab for analysis, in that particular instance. But on the whole, they can either send it in, or there is a discussion over the phone, or it comes up in the minutes. The minutes come in - we have a clerk just for the minutes - and she sees a health matter, she will circle it and it will either go to the hygienist of Dr. Colatta.

20 He will either call, make a judgement for the worker or the committee members, about the matter for detail, or tell the inspector...or if he sees by the nature of the problem, he may send out a hygienist. He would have to use his own judgement based on the concern.

25 So it depends. It's a combination. See, the hygienist and the medical unit and the inspectorate all share the same coffee pot. They are all circled around the committee minutes that come in...see, in the very structure...so the flow of talking and exchange...also, there is no reporting procedure, it's a horizontal administrative structure, so you don't have a kind of hierarchy that might discourage, and then memos are

30

A. (cont'd.) used rather than chatting.

So they have to work out the problems in that matter. They all make their judgements.

MR. LASKIN: Well, Mr. Commissioner, so I won't be accused of monopolizing all of Mr. Sass's time, I think I'll turn him over to my friends.

DR. DUPRE: All right.

Would this be an appropriate juncture at which to break for a few minutes?

MR. LASKIN: Sure.

DR. DUPRE: Shall we resume at five minutes to eleven, then?

THE INQUIRY RECESSED

THE INQUIRY RESUMED

DR. DUPRE: Very well, which order do you wish to proceed in?

MR. STARKMAN: All right, I only have...I'll go first, if no one has any objections. I really only have two areas of questions I would like to ask, and the first relates to the construction industry.

CROSS-EXAMINATION BY MR. STARKMAN

Q. I'm a little unclear as to what, as to how the Saskatchewan Act and Regulations and the government deals with the problem of asbestos in construction and, I guess, also in demolition. How would you regulate it and...first of all, how is it regulated?

A. Well, construction industry is under the general Regulations. We do not have a separate set of regulations specifically for that industry, and therefore the inspectors in

5 A. (cont'd.) that industry have to see that there is compliance in the same way they would in any manufacturing plant. There is no special construction regulations in the province.

Q. Would a contractor need a permit, or need to report to the ministry that they are embarking on a project that makes use of asbestos products?

10 A. You know, I don't know of any project that did, to be honest with you.

Q. That did make use of asbestos products?

A. Yes, where they would bring in asbestos for a construction site.

15 We know what's going on in terms of construction. That's not a problem in a province as tiny as Saskatchewan. Our total labour force, including agriculture, is only four hundred and fifty thousand. If you subtract seventy-five, eighty thousand farm families, you have an idea of our labour force.

20 In construction we have about twenty-five thousand. In general manufacturing, thirty thousand, and in mining - which is only two percent of our labour force - somewhere between eight thousand...maybe at certain peak periods, ten...but generally around eight thousand.

25 So we know last year in Saskatoon, there was a hundred and forty-four thousand dollars worth of permits and we have some idea of our operations, which means that the inspectors in that area have to pay particular attention in construction. But there would be no difference in terms of construction as anywhere else. The only difference would be in terms of the committees - the problem of setting up committees when you have an industry like that.

30 Here, the people that we would contact would be those, over a period of time, that had been appointed by the

5 A. (cont'd.) unions, got a little more expert in this area. But I'm afraid I can't be very helpful in the actual...this actual question - what happens specifically with a specific substance, other than greater attention is paid to this matter by the inspectors.

So a lot depends on the individual inspector on each site, and the awareness of the union or the committee on that site.

10 Q. There is no central registry or anything, that deals with...

A. No.

Q. ...the question of construction sites?

A. Not at all, no.

15 DR. DUPRE: Mr. Starkman, if you would just permit me to follow up on that.

Could I just ask you more specifically, Mr. Sass, to elaborate a bit on the problems, if any, that nonfixed-site industries - construction, could be demolition - have posed with respect to the structure and the operation of your joint labour/management committees?

20 THE WITNESS: Yes, it's quite different in your construction than in your industrial setting.

Now, on large sites - we have five-year projects - I'll admit stability gets set in. So on the Coronach site, the new power plant in Coronach, the committee was stable because we had a stable labour force. I mean, the labourers were on that site, I think, the whole of the five years, electricians at least three of the five, so that a committee could be put together and there could be some stability, there can be contact with the inspector and there could be contact with me, and it could begin to operate more like a fixed place.

30 But then there is the short-duration operations, and

5 A. (cont'd.) I'm afraid this has a lot to do with personality, individuals, particular unions, and even there there's a difference between north and south.

For instance, I think the construction committees in the north - north of Davidson, Saskatoon and north - for labourers seem to be much better operating. Minutes come in, they actually meet, they are concerned about the meetings. As soon as there's some problems, they immediately call the division.

10 I think this has in part to do with the business agent in the north - Al Newman - who has taken greater interest in this area, sits on a minister's advisory council on occupational health and safety.

15 So the notion that industry maims, union blames is more archaic to this group, and that a cadre of individuals have emerged who go from these sites, and wherever they go they seem to be the people. It's almost like a professional occupational health and safety activist.

20 That's because there's more training of these people, there is greater interest, the union took a greater interest in this area, and a group was set up and some of the individuals also make a difference. In some cases the individuals have an intellectual interest in the whole question of working conditions - what work does to them and how it affects family life, and so on, and they want to read about these matters, so their involvement and their activity differs and they take a
25 much greater role.

In some sites, it's not so and you have a lot of squabbling amongst the different jurisdictions - whether in fact an employee co-chairperson knows enough about the operating engineering procedure, what does he know about cranes, can he
30 make judgements for the crane operator.

DR. DUPRE: Mr. Sass, do you...

5 THE WITNESS: You know, what I'm saying is, I'm a little reluctant to generalize when there's so...each site has its own human personality, depending on what comes together and who comes together, and this is much more so in construction.

10 DR. DUPRE: Let's perhaps put it this way: Given the existence of certain construction sites where it is difficult to have an ongoing committee that selfmonitors the workplace, your branch retains, as I take it, a responsibility for assuring those safe workplaces.

THE WITNESS: Yes.

15 DR. DUPRE: Does this mean that in nonfixed industry sites where it is a problem to get selfmonitoring machinery that your inspectorate plays a more activist kind of role?

THE WITNESS: No doubt. They have to make up the difference. They have to compensate for the deficiency, the shortcoming, because we don't know how to appropriately handle many of these matters.

20 I would say also, we don't have any specialists amongst the inspectorate, you know, for particular factories like a meat packer or petrochemical and so on, except for construction. We do have some of our people more expert in construction, and play a wider role in that area.

We also try to work much closer with the unions in this area.

25 You see, I think the construction represents about ten percent of our work force and twenty-five percent of our fatalities.

DR. DUPRE : Thank you.

30 MR. STARKMAN: Q. In terms of the employee health records, does the ministry or any branch of the ministry keep employee health records, or require that the employers keep

Q. (cont'd.) these health records over a long period of time?

5 A. Where there are the health records, they are kept under the Compensation Board. Now, for instance, let me be specific where we require this. We had a large spill of PCB, polychlorinated biphenyls, from Federal Pioneer in 1975 or 1976. The minister issued an order that there must be tests or medicals of all the workers - not only at the time of the spill, but since
10 the startup of that plant.

The responsibility of getting the list was left to the union, the steelworkers, in this matter. Now, we did the medicals of all these, and we did hygiene monitoring, and the hygiene monitoring will continue until there are three
15 successive or four successive seasons where there was no, no level of PCB at all in this plant.

This minister order is still in effect.

Then the bloods, I think, were sent to Ottawa, which have the appropriate equipment - we didn't have it in the province - and they agreed to do it at no cost so they can
20 get a paper or some research out of it. It was a tradeoff in this matter.

Those records of each employer...of each employee, I'm sorry...of each employee are kept in case of future claims, by the Board.

Q. But other than...

25 A. We required that.

Q. Other than the example of an explicit ministerial order for an extraordinary situation, are there any other...or are employee records routinely kept, required to be kept, by employers or by the ministry?

30 A. Well, under the law, you know, we can do it in terms of asbestos, and in other cases. But we have not kept

A. (cont'd.) these records. We have only worked this out with the Compensation Board, where the records are kept.

5 Q. You say that the Compensation Board keeps the records. You mean in the process of a claim they keep the records relating to the claim...

A. No. In the case of...

10 Q. ...or do they routinely, just routinely the employees' records are deposited with the Workmen's Compensation Board?

A. Well, we worked it out with the Board in terms of the PCB, where there have been no claims, that the records should be kept in case somewhere down the line there might be a claim, then we can clearly show and have on record in the first instance that exposure, that they worked in that plant.

15 Q. With asbestos is that done as well?

A. It is not done now. It just hasn't been that large a problem.

20 We do now have records of those workers who worked at Centennial Auditorium in Saskatoon, mainly because that had been a problem, as you know, last December. Asbestos was found on the floor, and frayed on the beams, and they were required to clean that up. It was shut down, the whole auditorium, for the month of December while they cleaned that up, and those employees who are working there, we now have records of those.

25 But we don't have in the past, like what you are indicating. We haven't recaptured, and so on. That's true. No, we haven't.

30 Q. Reference was made earlier to the penalty sections of the Act, and I was...do you have any statistics which would help with the number of prosecutions and the types of penalties that have been handed out over the last...?

A. I don't have statistics with me. I could get

A. (cont'd.) those. I can make a general comment about the experience over the years, but I don't have any hard evidence on it, with me.

I mean, the penalty section goes up to two years imprisonment. Now, I can comment by saying that on the whole the penalty section has been very effete, very weak, and I would say it has not been, in itself, a deterrent whatsoever, in itself.

I think a greater...sorry?

MR. LASKIN: Tab sixteen. I'm sorry. I think there is some detailed information in your material, in tab sixteen, page two-fifteen.

THE WITNESS: Well, there it is. Tab sixteen... oh, this is from a report, yes, from the Economic Council of Canada.

What page was that?

MR. LASKIN: Two-fifteen, Mr. Sass.

THE WITNESS: Well, here is a breakdown here, and I guess I can respond by...what I was going to say is I didn't think they were very effective. My reason for saying that is, I think on the whole our judges have viewed occupational health and safety in terms of prevention - more like how they view traffic accidents. The degree of damage would be associated with some cost. So in areas of prevention where there is no damage yet, there is often a wonder - why are we taking this poor employer to court.

I think this is simply a problem that we are going to have to deal with. We are, and made recommendations to the Workers' Compensation Review Committee, which meets every five years, and we have met and I know they are going to come down with a recommendation to the ministry that we, in the occupational health branch, the regulators, the enforcers if you will, shall have authority to make recommendations to the Board commissioners for an assessment tax. We would have to argue, of course, this, but

5 A. (cont'd.) we can say, like, one percent of payroll for six months until this is cleaned up. You know, a way of dealing with bad actors in a different way.

Now, that's one response that's going to be recommended, and I should say that over the years about eighty percent of the recommendations of the Workers' Compensation Committee have in fact been implemented.

10 I don't know what tomorrow will bring, but in fact that will be one recommendation that is coming.

The second thing we have been advised, because of some of these problems, possibly have a tribunal, or to take these matters to a board, a special board, like the labour relations boards of sorts, in this area.

15 There is division here in thinking regarding this route, and I think on the whole we have not made any recommendations to change this penalty and this procedure, the prosecution in the final step, because it is our subjective feeling that employers do not like to go to court. They do not like to go to court in our province. Maybe because we are small
20 employers, maybe most of them are ten years off the bench, maybe they don't have sufficient legal staffing as larger firms do in this province, or whatever it is, they simply do not like to go to the courts, and they would prefer to go to a labour relations board or something like that which is more informal. I think that would be their preference.

25 First, the press usually does not sit in on hearings of the boards. The courts, well, where there is smoke, there's fire, and there is a bit more publicity, and I think it even costs more money. Win or lose, I think it just costs more money.

30 So the inspectors and others feel that the bargaining power of the inspector is enhanced by keeping the

5 A. (cont'd.) procedure, even though I just confessed I don't think there is much to worry about at the other end.

DR. DUPRE: Have the imprisonment provisions of the Act ever been applied, to your knowledge? Has anyone gone to jail for occupational health and safety violations?

10 THE WITNESS: Are you speaking of Saskatchewan, or globally?

DR. DUPRE: No, I'm talking about Saskatchewan.

UNIDENTIFIED SPEAKER: I think the answer would be the same.

15 THE WITNESS: No, I don't think...I mean, the value of that clause, I don't think, is in terms of the question. I think it has much more value with lower supervision. When they see that and that they can be held, it's much more...they are much more aware of this area.

20 But in terms of the actual possibilities of imprisonment, unless there is much more reconstruction in society of our institutions, I don't see this as a possibility at this time.

MR. STARKMAN: Q. Are there even...the figures that are on page two-fifteen, that we were looking at, the number of prosecutions, are against a corporation or against the individual?

25 THE WITNESS: A. We have both. We can do both.

Q. But we don't know what the breakdown is, from looking at this?

30 A. No, I don't have that. There are no workers who have ever been prosecuted, let me put it...I mean, in case that's the implication of individuals. There are no workers that have ever been prosecuted, and the policy is no workers will be prosecuted.

5 A. (cont'd.) Employers have responsibility for these conditions. They can get workers there on time, it seems to me they can get them to wear hard hats, too.

MR. STARKMAN: I have no further questions.

DR. DUPRE: Mr. McCombie?

CROSS-EXAMINATION BY MR. McCOMBIE

10 MR. McCOMBIE: First of all, before I start, let me just convey Linda Jolley's apologies and regrets that she wasn't able to attend today. I know she was most anxious to ask questions of Mr. Sass, but due to scheduling she wasn't able to make it.

15 MR. McCOMBIE: Q. I would like to just followup for a minute the question of the joint committees, and correct me if I'm wrong, but would it be fair to say that the joint committee is sort of the basis of the structure of the Health and Safety Act in Saskatchewan? Is that, in other words, more or less the constituency of the occupational health and safety branch?

20 THE WITNESS: A. Yes. It's an extension of it, because while we are the most highly-centralized administrative structure - so the Economic Council report says - I don't know if that's still true, I don't know if it was ever true, but the branch itself, the occupational health and safety branch, includes the occupational health and safety division - the toxicological
25 unit, the hygiene unit, the mines unit, the inspectorate, it also has a division on research and education, the training program, statistics and so on, the library, and then there is a third division which we call safety services, which only has a limited role regarding workplaces, but important in terms of the integration of their skills with the inspectorate as a whole -
30 that's the elevator, gas, radiation, boiler pressure vessel,

A. (cont'd.) fire commission and electrical.

Now, these three divisions and some ten, twelve units make up the branch, occupational health and safety. So while we are highly centralized in terms of the administration of these agencies and branches within occupational health, within the Department of Labour, we want to be decentralized...I think we are more decentralized in the actual administration, because these committees have to be seen as a reciprocal relationship with the branch.

In other words, when the inspector goes out he is accompanied with the worker representative and employer representative on the committee. The reports are signed by the committees, all the inspectorate reports. Copies are left with the committees.

When the employer has to followup on corrections or notices of contravention, a copy is given to the committee... in other words, what he is going to do, what he has already done... so that there is a monitoring role even here, of the committees.

The whole basis of the education and research division, wholly, is the promotion and the activation of the committees and the training of committee members and the monitoring and sending out information to them, etc.

So the idea is to have more of a reciprocal relationship with this highly-centralized, bureaucratic administration, in terms of the role of committees. Minutes come in, we have minutes prepared, they have come in since 1974, 1975, they are monitored, sent to the appropriate inspectorate, and when he goes to that plant he has the copy of the last set of minutes and concerns, with the committee, so he begins there, so to speak.

So I would say that while we are the most centralized, the administration is decentralized because of the

A. (cont'd.) key role of these committees. Yes.

5 Q. And in regard to the training that you mentioned, I gather there's a two-day training program, is that correct?

A. That's right.

Q. And that is for workers only, or is for workers and employer representatives of the committees?

10 A. No, for both. But, the classes are separate unless the workers want to join.

Q. So in other words, the workers could join the employers' class?

15 A. There can be a joint class of eight to twelve members. The course is exactly the same, but if workers choose then the class would be separate, so there would be eight to twelve workers - either from a plant that was large enough, or homogeneous groupings, you know, a number of the meat packing plants or farm implements would act as a single class for those two days.

20 Q. These training sessions, first of all there is lost time provided for under the legislation, or a regulation?

A. Yes, under the Regulations.

Q. Under the Regulations.

A. There's two days with pay, annually.

25 Q. Is it compulsory? In other words, would it be compulsory at some point for committee members to take one of these courses?

A. No.

Q. It's not. And the session itself, the training program itself, this was one that was developed by the branch?

A. Yes, it was. In 1974.

30 Q. When the program was developed, what kind of input was there? I mean, did the branch sit down with unions and

5 Q. (cont'd.) management groups to design the program, to find out what areas they would be looking at, or was it pretty well developed within the branch on its own?

10 A. I think the latter more than the former, although a bit of the former as well. I, myself, designed the first program. I have a background in labour education and I was a labour extension associate at Cornell University, in charge of labour training for central New York State, before coming to Regina in 1969. So I had some background in the design of adult education in labour training materials.

15 I had also been education director of the Ladies Garment Workers Union, Local 91, prior to going to Cornell University, where I had some familiarity with the various kinds of adult and labour training materials and approach.

20 Consequently, I was influenced by this exposure in the design of this kind of training program, so I adopted a program that I think has been patented in America, called Line by Line training, and this approach required teacher training or layteachers to be used, and the class size are eight to twelve, and there is a pedagogical reason for application of this principle, in terms of learning experience.

25 My preference for homogeneous groupings is because it reinforces the learning experience in terms of a situation of trust where people can exchange views, ideas, questions of strategy and tactics in the training program. There's a lot goes on in their discussion.

30 You take a group of workers - let's say twelve workers - in a training program, you have about a hundred years of industrial experience sitting there as well. It would be foolish for that to dissipate itself to the lecturing approach.

So this requires each page carefully designed and taught in a certain way, so that you have diversity of pages which use different kinds of intellectual modes of thought, so

5 A. (cont'd.) when you are doing close work, going over the regulations, tight work, two people, never alone, then there is discussion, then you may have a role playing, so that even here the design is prepared by certain pedagogical principles which I think are more attuned to labour education than general adult education, where there is information that you want to get across and you hope that more people reach up to it, and so on.

10 We had not followed that particular design or approach, so the very structure of our course, the nature of our training and the design of our material is different and we kept that.

15 Now, we initially met - after we designed the first program - we met with, for instance, labour leaders for Regina, and then north, Saskatoon. They went through the program, these full-time staffers, and we hoped that they would become the teachers, or assign somebody who would become the teachers, so there would be a multiplier effect in the actual training in terms of the rights, and monitoring and so on.

20 That did not materialize. This was left to the branch. So we developed a program co-ordinating unit and we have someone who continues to update the training, and then a number of teachers who do it.

25 In some cases, we have designed it for an organization, so now they are doing their own with their own teacher, after the teacher has taken this course.

But basically, that's basically been sort of the history or the approach.

30 Q. Okay. The other question on the joint committees, you mentioned that the committees would have access to monitoring equipment. This would be presumably supplied by the branch? Is that correct?

5 A. Yes, it's applied by the inspector in that district, area, looking after that factory. He carries around his own attache case with the different pieces of equipment, and then he leaves it there, or if it's not calibrated or there is some problem, he would have to get it for them, and the various pieces of equipment are cited, and what they do and so on, and he leaves it with the worker with appropriate instructions and so on.

10 In some cases, we leave the equipment automatically. For instance, in summertime, on hot days in August, we have the wet bulb globe thermometers, and we leave the WBGT's in this workplace, with a guideline, like for heat stress. So when the thermometer reads X level, they are allowed ten minutes; 15 Y level, fifteen; twenty, thirty-five. So there is a guideline with the equipment so it can simply stay there with the committee, without having the inspector be there.

20 Now, we know places where this...we know where we have to put it. I mean, we know some of our meat packing, we know laundries. By now we know. You know, it's ten years and we have it figured out.

Like I say, it's a small province. It doesn't take much figuring, you know.

25 Q. And presumably, then, the committees would then have access to the government or ministry labs to do analysis of samples?

A. That's correct. They would send in...that's right. Or in some cases the hygienist would have to go out, and so on. It all depends, again, on the particular circumstances, but yes, that's right. And nothing is confidential. They get the information directly.

30 Q. The committee gets it directly?

A. That's correct.

Q. Is there a requirement to post that information?

5 A. Yes, there are requirements, and the Act says, as in this case, like heat stress, 'please post in a conspicuous place.' Failure to do so is actually a contravention of the statute, not regulation.

Q. Mmm-hmm.

10 A. So what we do is, we know where to send this and we post it in the place so that these guidelines, in effect, become the rule for that workplace in terms of time away from the heat or the cold or whatever.

15 Q. One other question which may be related to the joint committees, and it arose out of an answer you gave to Mr. Laskin earlier this morning. You indicated when you were talking about the right to refuse that it was your philosophy that these refusals should become...should be coming more frequent and should be come an institutionalized part of the structure. Also indicated that there was still a certain hesitancy or fear on the part of some workers to utilize this.

20 I guess the question is perhaps a reverse of what you have often heard from other people. Is the right to refuse being abused by employers? I mean, are you seeing the kinds of perhaps not direct, but indirect, reprisals that some workers are afraid of?

25 A. It's clear that some are more aggressive than others, and also there are many who see the whole matter of the working environment clearly a management prerogative, and they are less tolerant of worker involvement and government interference. That this is clearly a management rights issue.

30 I would like to be more positive about the matter because, you know, that sun is going to come up tomorrow as sure as hell, as well.

On the whole, on the whole I think the employers

A. (cont'd.) today will not oppose this piece of legislation, nor call for its repeal in days ahead.

Q. We are talking about Saskatchewan employers now?

A. Yes, of course. I don't know elsewhere. As a matter of fact, I'm not sure I can say what I'm saying now, authoritatively. This is with a prayer. It takes time, you know.

But I think, on the whole, they will say that the matter in fact, there isn't the abuse they originally feared in 1973. We simply did not have that great general strike and the dropping of tools, you know, and the marching to the International... to Wascana Park, and so on.

I think it's fair to say that on the whole this. I don't think this represents the concerns today. I think it's regrettable, in some cases, there's such threats still made out of it. But on the whole, I think employers have begun to see that the refusals and the threats overwhelmingly are legitimate.

And where there isn't legitimation here, where there isn't that, I think the unions and the committees have played an enormous role not to put this cause into jeopardy. I think they have leaned over backwards in behalf of responsibility.

That would be my assessment of the situation at the moment.

Q. Well, that does lead to my next question, and I don't know if this is terribly politically sensitive, given your position, but I am getting the feeling from what you are saying that employers in Saskatchewan have come to terms with the health and safety administration, that it's not something that they are chomping at the bit to get rid of - or at least not in the foreseeable future - and I'm just wondering whether there has been a lot of pressure from employers to change particular aspects of the legislation or the administration.

5 A. Yes. I don't want to be too general, and I'm afraid it's hard to answer the question unless I'm general, otherwise I have to be specific, you know, about different employers, different industries, the reaction of the different associations - construction, mining associations, Chamber of Commerce and so on.

Q. Maybe I could rephrase it.

10 A. It's hard to say this. I mean, I'm speaking generally because clearly it has been my experience now that there is a greater recognition, that better conditions are emerging and the committees on the whole are responsible, and that demands that are made have legitimacy, and I think on the whole it has been a good thing, and I don't think there is going to be any great outcry for repeal.

15 There may be outcries for some removals of some people, things, and so on, but I don't think in terms of the law.

20 Certainly I think it could be very difficult to do it, even from a political point of view, because once these rights get into the informal structure of the plant, the day-to-day kind of operation, it's very hard to take that away without feeling that something has been removed with a possible political consequence. Even the present government...I mean you talk about political sensitivity...did receive a large amount of votes from workers, you know. They won all the urban seats, you know, except the two in Regina. Where the NDP held its rural popular vote - the thirty-seven point five percent, thirty-eight percent, they lost seventeen percent of the urban ridings a month ago.

25 Now, I think there is going to be some sensitivity about these, and it's going to seem to me very hard to change too much in our meat packing plants, in our farm implement plants, in IPSCO, where this has now become part of the culture of that

30

A. (cont'd.) operation.

5 It would be very hard. It's almost like progressive legislation. You can tinker with it, but it's very hard, often, to remove progressive legislation, and I don't foresee any dramatic changes in that regard.

10 Q. I guess I'm really trying to get at is, from your discussion this morning it's apparent to us that the policy of the health and safety branch in Saskatchewan, since the last few years, with regard to asbestos specifically, which we are dealing with, is quite a bit different than the experience we have had in Ontario, and I'm wondering if this has been perceived by employers in Saskatchewan as a real impediment, whether they have said if you are going to issue orders when we are at a point zero two level, we are going to pick up and move...we are going to move out of the province.

15 A. Yes, yes. I see the point. The location theory of economics.

20 You know, it's very hard to take our potash mines elsewhere, as it is forestry and other places of work. I have had some meetings with employers who indicated that eighty percent of their product goes to Alberta, and our regulations not only in occupational health but regarding welders' qualification and so on, were stringent, and it would be better to operate there.

25 Well, I could say that they are still operating in Saskatoon, this particular operation, and obviously there is a lot more than simply just economics - skilled workers, can you bring along many of your professional staff, they have homes there, the kids are in school. There are a lot of other features that are involved.

30 So, you know, while the location theory of economics, I guess, has merit and I think you'll see it in terms of the market framework of economics, I don't think it's so black

A. (cont'd.) and white in that regard.

I would also say that such discussions are rare...
5 and I'm talking now almost a decade...are quite rare.

That would be my response.

Q. So it would be fair to say that in general,
in realizing that one is only speaking in general on these things,
in general the economic costs of compliance, I guess, have not
10 been as staggering as some people might lead us to believe?

A. Yes. I mean, the literature that is circulated
from some quarters suggests that, for instance, in compliance
with the lead standard in America, it would cost billions and
billions of dollars because you would have to start from bottom
up. This was the same calculated in terms of compliance with
15 the noise regulations of OSHA, etc.

I think these are exaggerating and these are
really political statements, rather than numbers that approximate
the cost.

First of all, the issue is not prohibition or
starting from scratch. The issue is to simply recognize the
20 magnitude of the problem regarding health and safety. That's
first.

Secondly, to look at the question of control
technologies, which is a very underdeveloped part of this whole
field of occupational health and safety. There is much more
data banks...as a matter of fact all data banks are based on
25 biological or medical. There is no such data bank based on
engineering technologies and controls, nor has there been, I
feel, sufficient incentive to push in this area to develop
engineering controls and technology...including in our law in
terms of planning, design, at the very early stages in
30 plants. This is an area that has to be opened up in occupational
health and safety, and the costs regarding employee layoffs, you

5 A. (cont'd.) know, the tradeoff situation or the cost of inflation, I sort of lean...you know, I'm really not a communist here...I'm sort of leaning to the studies of Nicholas Ashford. Some have been outlined in his book on Economic Considerations, I believe chapter two, in the crisis at law, but in my discussions with him that the costs have been exaggerated and as a result there has been a response to this exaggerated cost, to minimizing the problem because you can't meet the costs.

10 Q. Mmm-hmm.

15 A. I think they are blown way out of proportion. There is a lot that could be done in terms of reducing, bettering, and to work it out over the long period of time in terms of investments, to bring the incentive on the engineers, industrial engineers, to look at new designs, new control features, and to even have workers very much involved - especially the skilled workers - in this area, to seek ways...partially technical, partially social. In many cases the problem may simply be the organization of work...how the work is organized, and you could see new ways of organizing the work, as well as opening up
20 areas of job design, which would also go a long way to reduce the hazards and the concerns that workers have.

25 Q. Would that in any way be part of the mandate of your branch, the whole question of controls and organization? If I were a small employer and there was an order issued or there was a problem that was brought to my attention by the joint committee, I mean could I approach the branch and say, listen, I've got a problem, can you suggest ways of dealing with it?

30 A. Well, we try to, you know, as best we can. But you know, this depends on the skills of our present staff, and we have problems. For instance, there are actually no acoustical engineers to be found in the whole Province of Saskatchewan. These are problems, again, that we face.

5 A. (cont'd.) That's why we need the integration of the safety service, because the head of our electrical branch is an electrical engineer, so he can have important input in these matters. Here is just the best we can, working with employers.

10 In some cases we have...well, you know, we have tried to work co-operatively in bringing in people. In one case we have a separate agreement between the employer, the employee cochairpersons and unions and the branch. This is called the Work Environment Board Agreement. This is an agreement signed by the president of the Potash Corporation of Saskatchewan, which is over four mines, the three certified unions that have certificates to represent workers, and the four employee cochairpersons, and myself.

15 Now, we have an agreement here which sets up a board, which includes these persons I just mentioned - seven and seven - seven labour, seven management, myself as the chairman. This is a separate agreement.

20 Now, this agreement gives this board authorities pertaining to all matters respecting the work environment. That means occupational health and safety research, medical surveillance or the medical occupational health unit - that means we can veto anything the doctor does or want to do and instruct what should be done - and psychosocial matters which we have interpreted as work organization and job design questions, and eight or nine items.

25 Every year we negotiate in August for monies for our Work Environment Fund, so we have separate monies to carry out the duties of this board, which includes the employee cochairpersons of each mine.

30 In the first year, we negotiated two hundred and fifty thousand. Our budget next year will be an additional

A. (cont'd.) hundred and sixty thousand dollars.

Now, this agreement is where we have this fund,
so we have some leeway. Now, we already contracted at eighty
thousand dollars regarding occupational health research. We
recently brought in a consultant, because we have this money,
to do a study on participative schemes, work organization
questions, how it could be instituted, what are the possibilities
within this particular Crown corporation.

This was Professor Jerry Honius (phonetic) who
was there for five weeks, and he went around to the mines, talked
to people, and is coming up with the report. From that report
we will have direction in how to proceed.

Now, this notion is based on the fact that the
present concept, or legal concept of risk, rule-based law, is
too narrow and confined to physical contaminants and hazards,
and it's the desire and long-term policy to stretch that
concept of risk to deal with other matters which matter to
workers regarding the work environment - pace of work,
scheduling, monotony, boredom, authoritarianism at work, sexual
harrassment, work organization, job design questions - because
these have an enormous bearing on nonwork time, and also has
enormous bearing on the traditional health and safety matters.

Now, I don't know where this agreement will...I mean,
what the next step will be. I mean, a lot depends on the economy...
as I mentioned, twelve hundred people have just been laid off
for the summer, and I mean obvious this is going to have an
effect, undoubtedly, but the idea is to begin to open up these
areas as an integral part of occupational health and safety,
because in fact they are parts of health and safety.

So the next stage, it seems to me, is to extend
the rights of workers by increasing the legitimate items for
what committees can deal with - hence the word 'work organization',

5 A. (cont'd.) or the question of work environment, in the full disclosure section that I read earlier, because these matters are considered work environment...and beyond the traditional, at least proceed beyond the traditional matters pertaining to health and safety.

10 Now, it is true that some employers think this is an infringement on management rights and prerogatives, and that confronts more directly management rights. But I think we have to open up, I think we have to open up that question if we are going to get on the traditional physical matters, and that seems to be what would be the next stage in occupational health and safety developments not only in Saskatchewan, but I think also in Canada.

15 Q. Just one last question, and it's something that you mentioned briefly in passing to Mr. Starkman, but maybe you could give us a bit of an idea of the situation that arose at, I believe you said it was Centennial Auditorium?

A. Yes.

20 Q. This was a public building that was shut down because of asbestos?

25 A. That's correct. It's a CUPE local that's there, and they refused to work until the asbestos in their work areas was cleaned up. Now, even though there were no reading of ambient asbestos in the air - we couldn't get any readings - the fact is there was frayed asbestos and there was even...I myself went through the work areas there and could see that asbestos was falling...and we issued an order that this had to comply with the regulations, which simply in this case meant cleaning it up.

30 The result was that the auditorium had to be closed down for December, so that they could clean it up.

Q. Who was the...

5 A. All the asbestos was, therefore, removed,
not in just those areas, but once you start, they cleaned up
the whole of all the beams that were sprayed with asbestos
in the late fifties...I think that auditorium was 1959, that's
when they were using it. It's just the early sixties that
they moved away from the limpid spray asbestos, so that's why
we don't have the problem at the Arts Center. It was delayed
in construction, and as a result they didn't use sprayed
10 asbestos.

DR. UFFEN: Could I ask a question which I think
is probably appropriate here, rather than later?

MR. McCOMBIE: Sure.

15 DR. UFFEN: What happened to the cleanup, disposal
after the cleanup? I read the Act and I find one clause dealing
with it, and it just states:

"Proper disposal in a manner that will not
create a hazard to workers at the disposal sites".

20 THE WITNESS: That's the Department of the
Environment here, but in terms of how it was cleaned up, we
had somebody there.

DR. UFFEN: Did you have anything to say about
the disposal site? You cleaned up one place and take it
somewhere else, and then you have no jurisdiction over what
happens to it?

25 THE WITNESS: If they bury it, then the Department
of the Environment has jurisdiction, because of the water
system, and I rather that they handle this question because they
did it - they did handle this matter.

Outside the work place, is the environment.

30 DR. UFFEN: I am not legally trained, but I conclude
that this section 118: "The proper disposal in a manner that
will not create hazard", is defined by some other organization
and...?

5 THE WITNESS: Well, we have authority here, but somewhere in the mid-seventies, we found out that the environment is somebody's workplace and we felt we ought to put our own limits, otherwise the powers through the legislature to us are unbelievable and unrealistic, because somebody works outdoors.

So what we did was we met...we have various co-operative groups with different arrangements, and generally this includes public health, environment and ourselves.

10 Now, there are different arrangements when we are dealing with different problems...like urea formaldehyde, of course, we had Consumer Affairs in that arrangement...so that there is a lead department.

So when asbestos problem emerged in schools, the Department of Education was the lead department in that area.

15 It's true that teachers work in schools, but the real political issue was for the kiddies and there was no way you could get around that. So our role was to train each of the superintendents of each of the districts, and the principals, how to take the asbestos, how to recognize it, put in the bag, send it to our lab. We did all the lab. That went, then, to 20 the head of...superintendent of schools for the Department of Education, for the cleanup, and we did the followup and so on. But that was a combination...

25 DR. UFFEN: Does your lab have transmission electron microscopes and that sort of thing, for sophisticated identification?

THE WITNESS: I don't want to speak technically on this. We have electron microscope, but I'm not prepared to say how sophisticated...

30 DR. UFFEN: It would be in your lab, not in the Department of Health?

THE WITNESS: No, no. We have that. We have that.

THE WITNESS: (cont'd.) We did all the analyses of the asbestos sent in from schools.

DR. UFFEN: Thanks. I got what I wanted.

MR. McCOMBIE: Okay...

DR. DUPRE: On that, if you would permit another followup, Mr. McCombie, what kinds of measures did your branch take to ensure the safety of asbestos-removal workers either in Centennial Auditorium or in the schools?

THE WITNESS: Our asbestos regulations in terms of the removal and the procedure is clearer, and we had our inspectors in the appropriate school districts - where they overlapped, with their own regions - look into that matter, and they were assigned that during that period. That was a major priority.

DR. DUPRE: So this would be an example of nonfixed-site industry?

THE WITNESS: Yes.

DR. DUPRE: Where, indeed, the inspectors had to have quite an activist role?

THE WITNESS: Oh, yes. As a matter of fact, to tell you the truth our whole laboratory, for almost three or three weeks, full-time, including an enormous amount of overtime - and that can be shown - was just working on this problem.

MR. McCOMBIE: Q. And the employer in this situation, I gather, was the City of...was it not...the City of...?

THE WITNESS: A. Oh, Centennial Auditorium, yes. That's right. City of Saskatoon.

Q. Saskatoon?

A. That's correct. And there was a meeting of the aldermen and the allotted the monies to clean it up.

MR. McCOMBIE: Okay. I have no further questions. Thank you.

THE WITNESS: Details of that are in case two, in the paper.

DR. DUPRE: Mr. Lederer?

MR. LEDERER: Thank you, Mr. Chairman. I just think I'll be about half an hour. I don't think it should be any longer than that. I certainly hope not.

CROSS-EXAMINATION BY MR. LEDERER

Q. Mr. Sass, what I would like to do is, I have just a couple of general questions of the beginning and then I want to go at what I take to be four or five of the central thrusts of the legislation in Saskatchewan - I have a couple of questions on each of them, and what I'll be asking you first of all is whether I am right in suggesting it's a central thrust, and I think, if I remember correctly, at the end I just have one or two other things that I am interested in.

Just generally, at the opening, as I understand it, the legislation of this type really came into place in Saskatchewan originally in 1972, is that correct?

A. Yes, it is.

Q. And am I right that it was substantially rewritten in 1976?

A. No.

Q. Has it been substantially rewritten since 1972?

A. In 1977, I think seventeen additional clauses and the expansion of the earlier clauses of the 1972 legislation have been amended, yes.

Q. I'm sorry. Were they additions or amendments?

A. Both. Seventeen were additions, and in almost all the other clauses I think there was a good deal of revision.

Q. Were there further changes made again in 1980?

A. Yes. 1981, we accompanied...new health and committee regulations to accompany the legislation.

5 Q. And would I be correct in saying that those two sets of changes and whatever other amendments have occurred in the interim, were essentially designed to respond to difficulties and problems that had come up in the workings of the legislature?

10 A. Yes, and just the increase in our own knowledge - what's going on - as we became more educated about the field and problems that emerged.

15 Q. What I take from that, and I presume it to be self-evident, is that what we have here is a situation which is evolving. We started in 1972, with some basic knowledge. Over the ten years that this legislation has been in place, we have learned some more things, we have perhaps identified problems we didn't have at first, and so the process and the way of dealing with this evolved over a ten year period to this date?

20 A. Well, yes, I would say. On the other hand, there hasn't been a great...we haven't altered, I should say, the underlying assumptions that we began with in late 1973 and 1974.

25 Q. Do you accept the word 'fine tuning' as a description of what has been going on?

A. Well, I'm going to make a value judgement. I think we've bettered it.

30 Q. Fair enough. And would I be right in saying that you hope to better it yet in the future?

A. That would be desirable.

35 Q. My point simply being that we are in the middle of an evolutionary process in which we are trying to find a way in which to deal with these problems, as our knowledge increases and as we learn more about the substances that we are dealing with and the processes that we are attempting to put in place. Is that fair?

A. Sure. Yes.

Q. Now, you said a couple of times - and I think this point again may be self-evident, I think it falls out of this notion of evolution - you said a couple of times that Saskatchewan is a, to use your words, a small province. Would you be prepared to accept from me, and I have no figures here, that Ontario is a larger province?

A. Yes. I was using small relative to large - Saskatchewan being small with a labor force of four hundred and fifty thousand, and a population of less than a million, to Ontario that has over eight million, or Quebec with over five and a half million. I meant it in...those were the proportions I was talking about.

Q. So in Ontario, presumably, arises out of all that is, first of all as you said, we have more workers. Presumably what arises out of that is that we have more construction sites, we have more mines, we have more manufacturing plants?

A. Yes.

Q. What I presume that would mean is, that the problem or the issues that arise from concerns that confront this Commission are therefore...if not different, they are larger and perhaps more complex simply because of the numbers that are involved?

A. Well, I'm not certain...I mean, this is an administrative question that I just haven't lived under...I'm not certain whether the magnitude or the quantitative difference results in qualitative distinctions.

In other words, the fact you have more mines, more manufacturing plants, more services, doesn't mean that workers should have less rights, for instance.

Q. Oh...

5 A. I know, but I mean, it doesn't...I mean, there are ways of decentralizing, there are ways of administration it seem to me, that doesn't necessarily mean that the economies of scale are of such a nature that you can't possibly use similar principles.

10 Q. Not meaning to contest that point with you, but what I'm really after, I think you would agree with this much, is that due to these differences in sizes the problems which confront government in these circumstances, confront labour in these circumstances, confront employers in these circumstances, are different, somewhat different than confront the people of Saskatchewan. Do you agree with that?

15 A. You know, I don't know. Let me just think for a second. I don't know whether I agree with it.

I mean, I would say the magnitude of the problem is greater because more and more people are affected.

20 Q. Let me just put my final question on this line to you, so you can understand the point that I'm getting to. What I'm really suggesting here is that given the evolutionary process that we talked about, that as a practical matter in order to fit into an Ontario scheme, because of the larger number, the process is going to have to be evolved even further because it's going to have to evolve to deal with the larger scope of problems or issues.

25 A. I think I would have to say, just logically, yes. But practically, I don't know whether I want to say yes.

Q. I'm happy to stick with logic in this circumstance. I don't know about anybody else.

30 A. But that doesn't always tell you what's right. As you know, it's a tool, but it doesn't really have any moral bearing on appropriate conduct.

I don't know, I don't know the answer to that

A. (cont'd.) question. I have always worked in a small environment in these matters.

5 Maybe the issue, to distinguish what I'm getting at between this question of quality and quantity, is what do you mean by 'the central thrust' of our program?

Q. I'm coming to that.

A. Maybe that's the heart of the matter, and then maybe if we can get over that particular matter, then we
10 can talk about the degree of largeness or tininess or smallness.

Q. Can we leave it this way, that at least in logic you would agree with what I have said, and let me go on and see where we...?

A. Yes, yes, I do agree. Yes, I do.

15 Q. Now, there are a couple of areas that I take to be the central thrust of your legislation, but let me give you the three that I think probably are the principal.

As I understand the legislation, what it's intended to do is, first of all, to ensconce in law for the worker a right to know. Secondly, it's intended to ensconce
20 in the legislation, for the worker, the right to participate, and thirdly, it ensconces within the legislation, for the worker, the right to refuse - and that last one you have already discussed at some length.

Now, firstly, would you agree with me that those are perhaps not the only, but three of the principal aims, if
25 you like, of that legislation?

A. I would say that this is a concern of the approach that we take in Saskatchewan, to promote rights of workers - the key word being activation of workers regarding working conditions. Whether these three rights in and by itself mean anything...as a matter of fact, they really have very little
30 meaning unless they are in combination anyway.

Q. What has very little meaning unless they are in combination?

5 A. Well, the right to know and participate, it would seem to me, would have less meaning without the right to refuse, because it would be hard to imagine our committees functioning satisfactorily without some right to refuse to speed up the procedure, in the same way the right to strike speeds up the discussions in collective bargaining.

10 Also, without the right to refuse, it's hard to imagine the right to know being very effective.

Q. In fairness, I would like to go to certain points with respect to each of those three items with you. At this stage, all I'm really after is your agreement with me that those are three of the principal aims of the legislation - not
15 restricting it to those aims alone.

A. Well, I would say yes to you, but when you use the word principal you are sort of implying the underlying assumptions of the program.

Q. Are they three of the aims of the legislation?

20 A. Yes. But they are not the underlying assumptions.

Q. All right. Can we look, for a moment, then, at the right to know. Can you explain to me, and it may well be self-evident in the legislation, what it is that a worker has a right to know? What information are we talking about here? What
25 routes does he have to obtain that information, and in fact what certainty does he have that the information he has is accurate and proper?

A. Well, one of the things he has is the right to refuse if he doesn't know. That speeds up getting of
30 information from suppliers, from employers, from bureaucrats, from industrial hygienists.

Q. You'll agree with me, I presume, that the right to refuse is pretty drastic measure, since it entails the stoppage of work?

A. No, I wouldn't say drastic.

Q. All right. You and I...

A. I think the breathing of asbestos dust is probably a hell of a lot more drastic in this instance, or any kind of foreign substance, into the body, or working with fumes and dusts of high concentration, loud noise. That's a hell of a lot more drastic, wouldn't you agree?

Q. Well, you very cleverly switched this over into a very subjective issue. Of course I agree with you, who wouldn't. But my...

A. I don't believe dust is objective.

Q. My point is...

A. I don't believe they are subjective matters. I believe these contaminants are not really ...

Q. With all due respect, you and I could...I have a feeling that I could probably sit down and have a wonderful discussion for a whole day and the only people who would enjoy it after we got past the first hour would be you and me, so with all due respect let me just try and see if I can keep this a little narrower than that.

A. Okay.

Q. Obviously, to breathe in asbestos dust is drastic. It's the whole reason that this Commission has been formed. But presumably, okay, what you would like to see is a safe and a clean and appropriate workplace, so that work doesn't have to stop and so that work can move on without any danger to peoples' health?

A. Yes, I would subscribe to your proposition.

Q. All right. Now, noting that as the basic

5 Q. (cont'd.) goal for which we are all concerned here, would you agree with me that the refusal to work...we've failed, as a practical matter, when somebody refuses to work? Because at that point somebody is saying, it's not healthy, it's not clean it's not proper. Would you agree with that?

A. Yes.

10 Q. All right. Given the fact that some people would consider failure to be drastic, in my rather narrow terms, if you like, would you agree with me that the refusal to work is a drastic way of getting information, is a drastic step to have to be taken in order to obtain information?

A. No.

15 Q. All right. Is there anything before a refusal to work, any power that a worker has prior to that, to get the information that he wants or needs?

A. Yes. He can request it.

Q. All right. And how does he know, having requested, what the...how is he able to evaluate the quality of the information that he has obtained?

20 A. Well, it of course depends on the judgements of workers. It would be more desirable that academic studies are not the issue here. The idea of the central thrust of our program is that in all technical questions pertaining to health and safety is also the social. Now the social, I am talking about the power relations in industry.

25 I mean, after all, who designs the workplace? What input did workers have in it? Who organized the workplace? What input did workers have in it? The organization of work.

30 Now what I'm saying is, these areas have to be opened up. I mean, the question of drastic is a rather static notion, you know...we ought not be taking such action because it slows down production. What I'm saying is, okay, that's a

A. (cont'd.) point of view. I'll agree.

5 But that's not the issue in occupational health and safety. The issue in occupational health and safety is to open up these rights so that workers can be involved in those matters which matter to them, and that's a way of getting at the problems of occupational health and safety.

10 Q. I would like to come to the workers' position in all of this in a moment, but if I can just try and summarize it, I think you said in response to my question - which I sense you found a bit too narrow - what you are saying to me is, that the worker's right to know, the power, since you have used that word, that he has in order to fulfill that right, have compliance with that right, is he can ask for the information, and beyond that if he doesn't like it, he can refuse to work. And that's
15 basically it - you move from that one point, I'm asking for it, to I'm refusing to work. And there's very little in between.

A. Well, there's a big process in between. That's the reality of industry. I mean, that's the problem.

20 Q. But the substance of the thrust of the legislation is that two-step?

A. Well, the rights of workers causes a change in the relationship between labour and management, too, regarding work environment questions.

Q. Who provides the information?

25 A. It comes from many sources. Our own branch provides information, unions provide information, management provides information, workers may get it from various sources - this will probably increase with the growth of the Canadian Center of Occupational Health and Safety, and so on.

30 So kinds of information that become part of discussions come from many, many places.

Q. Okay. Can we move from that, now, to the

Q. (cont'd.) second of the three rights that I gave you, the right to participate.

5 Would I be right in saying that one of the key elements of the right to participate are the committees that have been formed, and discussed here with the other people who have asked you questions?

A. Yes.

10 Q. I would like to refer you, if I may, just briefly to one of your papers - this is the one that you'll find at paper sixteen. I have it as number sixteen. Tab sixteen. Page 205.

A. Yes. I have that now. This is not a paper I wrote.

15 Q. Oh, I'm sorry. Well...

A. This was a paper as a result of a researcher, Dr. Reschenthaler, from Alberta, who spent time in Saskatchewan, and he has written this for the Economic Council of Canada.

20 Q. I would like to read you the last paragraph and...205, page 205.

A. Yes, I have it.

MR. LEDERER: Mr. Chairman, perhaps it would be appropriate if I read this into the record, since I'm going to refer to it.

25 Thank you.

MR. LEDERER: Q. "In addition, government officials responsible for occupational health and safety insist that all business be conducted through the committees. The inspector deals with management through the committees, at least in the first instance. All agreements between management and the labour department occur subject to committee

30

Q. (cont'd.) "approval. The ministration is important.

The administrative procedure, and not the law, accounts for government working through the committees.

The committees achieve increased legitimacy and enlarged authority as a result of administrative practices and of committees in the arbitration process, and the protection provided to labour members."

Now, first of all, since you have said you didn't write this paper, do I take it that you agree with what is said in that paragraph?

THE WITNESS A. In part. I am not certain I agree with the thrust of the paper as a whole, either, and I don't want to separate the parts from the whole.

Q. Well, perhaps...

A. But there are some basic differences of opinion which I hold, as opposed to Professor Reschenthaler, in this area.

Q. Well, let me ask you my questions, and they arise to some degree out of this paragraph and if I should hit something that you disagree with, I would be only too happy for you to tell me. Actually, my point is quite a narrow one.

As I understand this paragraph, the concept is that the committee really is at the center or the nexus, if that's the right use of the word, of the relationship between labour, management and government. Nothing happens that doesn't somehow funnel its way through the committee. Is that a fair statement?

A. In part. I was objecting to it all, 'all business'.

Q. I'm sorry?

A. I was objecting to the word 'all'.

5 Q. Well, that's the word that hits me, that's the word that got me going on all this, so maybe you had better tell me...

A. I think it got me going also. I mean, that's rather excessive, you know.

10 Q. Well, in practice, this paragraph makes the point rather strongly, I think, that it's the administrative procedures that rule here, and not law, which I take to mean not the legislation, so as a practical matter can you tell us, does 'all'...all these matters, all these issues...do all of them find their way through the committee?

15 A. No.

Q. As a matter of practice?

20 A. No. I don't know why Resenthaler took this viewpoint. I had hoped he had visited committees and actually went into the field. He just did some interviewing and so on. This is not a criticism of his abilities or his talents - he has a background in public administration - but this is a rather excessive paragraph. To use the word all here is rather dogmatic and doctrinaire about personnel, policies and so on. I think it's rather...I would just say it doesn't seem to me to be my experience as director.

25 Q. Ignoring the word 'all', then for the moment, and coming back to what we agreed on, which is that these committees are the nexus of the three interested parties in all of this, what interests me is this: The committee apparently is a powerful organization in the field of occupational health and safety, and what I'm wondering is whether or not it is possible in the conceptual framework in which all of this is
30 organized, if you can see in the abstract the possibility

5 Q. (cont'd.) that as a practical matter a committee could become too powerful and in effect detract from the responsibilities that management has in relation to this field? Could it, in effect, usurp management responsibility to the point where management...

A. In the abstract, I think I would agree with you. But I wouldn't accept abstract wages in terms of my labours, either.

10 Q. All right. Having said that it's plausible in the abstract, what I take that to mean is that it hypothetically is possible...

A. Yes.

15 Q. ...is it a concern that you have for the framework you've put in place? Do you see the possibility of it happening over the next period of evolution of this process?

A. Well, let's talk about the timeframe. I mean, I don't want to be a prophet in this matter and say that the next great evolutionary frame, workers will have control over the work process.

20 Q. If you are going to be a prophet, I have several questions about the Blue Jays that I would like to ask.

A. Well, I want to know how far you want to restrict me in terms of my prophetic pronouncements in this regard.

25 Q. Well, I'm not restricting you at all. What I'm concerned about is whether..frankly, I think the question doesn't require a long answer. What I'm wondering is, whether or not you foresee, given the fact that it is hypothetically possible, that as this process continues to evolve that this difficulty might in fact confront us? Is it possible?

30 A. Well, I don't know what will happen.

Q. All right. You are not denying that it's

Q. (cont'd.) possible, then, you are just not...

A. In the abstract, I would concede. Of course,
5 I would concede many other things in the abstract as well.

Q. Would you agree with me that that is not,
to quote Shakespeare, a consummation devoutly to be wished?
You don't want management to...you don't want to see management's
responsibility decreased in any way through the operation of
these committees, do you?

10 A. Oh, yes, I do.

Q. Oh, you do?

A. Oh, yes, I do, if that's your question.

Q. That is my question, yes.

A. Yes.

15 Q. You would prefer to see the responsibility
for safety taken away from management completely...

A. No. I want to see management more responsible.
I want to see management more responsible regarding working
environment, and have more sharing of authority pertaining to
working conditions.

20 Q. All right. Let me change the word for you.
Perhaps responsible was not the right word.

What I am interested in is accountability. Now,
presumably you do not want to see a scenario in which management
is any less accountable, if that's a better word, for health
and safety than they are in the present day?

25 A. No, they must be more accountable and more
responsible for these areas.

Q. If they are more accountable...all right, well
having given the hypothetical, abstract notion that it's
conceivable that responsibility could be withdrawn into these
30 committees, do you not foresee that in that sense responsibility
and accountability are virtually the same thing? In other

Q. (cont'd.) words, as responsibility is removed, that accountability may also be removed and find its place more in the committee than in management?

A. Well, this is so abstract as to be very absurd in terms of what goes on in the workplace, and what I can foresee of the next five to ten years.

The fact remains that on the whole workplaces are rather authoritarian institutions. Less of that would be to my liking, yes. You are absolutely right, if that's the implication.

I think workplaces ought to be kinder, I think there ought to be less authoritarianism in the industry, I think there ought to be more input by workers regarding the work environment, and in the long run, if that develops, I would favor that. That's my own personal thing.

But the Act in Saskatchewan still makes employers responsible. They have the ultimate responsibility. Nor do I want to see that removed under the present situation.

Q. All right. And to try and sort of conclude this point and go on to something else, what you I think have said is that it is at least, so that I don't put words in your mouth, hypothetically possible that committees could become too powerful, and that accountability might, in some future circumstance to some degree be reduced in management and increased in the committee?

A. No. I would simply say, if we are talking in the abstract and then switching to the concrete and back to the abstract, I would say the increase or the expansion of democratization in all institutions in our society would be to my liking.

Q. Well, I'm not entirely sure that responds to the question, but I presume, Mr. Chairman, the point I am

Q. (cont'd.) attempting to make is made and can either be accepted or rejected by the Commission as a possibility.

5 DR. DUPRE: If the Commission can grasp it, Mr. Lederer.

MR. LEDERER: Well, maybe I better go back and try again.

10 MR. LEDERER: Q. Let me just warn you, by the way, that I'm not going to make my half an hour prediction.

Well, the third of the three aims that we talked about was the power to refuse, and there has been a fair amount of discussion about that already.

15 I suspect this is self-evident from the questions that have been asked, but just to make it clear let me ask you, insofar as you are concerned has this right to refuse in fact worked? Is it a successful endeavour?

20 THE WITNESS: A. Not as much as I would like to see, to be frank with you. I think it's a good idea. I think it ought to be in legislation. But I would have thought, in 1973, that a lot more good would have come from it than did...as I look back now, in 1982.

Q. Mr. McCombie asked you whether or not employers had, to use the words of legislation, discriminated against those or with respect to those who had refused to work. Do you recall that question?

25 A. No, but I can answer it.

Q. My recollection of your answer was...or is, sorry, that you indicated that after all was said and done, the workplace, as you said a few moments ago, is an authoritarian place and that people can't quite forget that past history.

30 A. Do you want me to confirm that again?

Q. Yes...absolutely.

5 Q. Well, I want you to confirm that in response to my question, which is can you indicate whether or not there has been a problem with employers, again to use the words of the Act, discriminating against those who have in fact used the right to refuse?

10 A. There have been cases of discrimination, and some we've had even go to the courts. But on the whole, speaking in an evolutionary sense as the thrust of your question, I would think that things are getting better regarding the acceptance of the committees, the rights of workers and getting more senior management people on the committees to give it a sense of importance that they are emerging to something which matters, not a nuisance, by law. And I would say that there are some that see it as a bit of a nuisance, an infringement on their rights, that somehow part of the right to manage is to have total and exclusive control over aspects of the work environment.

15 Q. I think you indicated this, but have you prosecuted people under that section of the legislation?

20 A. Under the rights? On both...sixty...

25 Q. I don't know the number, but there is a section which talks about...twenty-seven, I think it is...a section which talks about the no-discrimination provision. It refers to the courts directly in that section.

30 A. Well, yes, we have gone to courts on the no-discrimination clause.

Q. Have you?

A. Just on that one. Oh, yes. Yes, a worker was given a reprimand which we believed had more to do with his activities on the committee, and we went to court to remove the reprimand.

Q. And were you successful?

A. No, we weren't.

Q. Is that the only time, or are there others?

A. No, there were other times in the terms of...
5 we had a dismissal of a heavy woman, in terms of a school bus.

Q. Was that because of her right to refuse, or
for some other...

A. Yes. Well, it was a right to refuse that
then results in a dismissal, so that was a discrimination and
of course they are protected under that section.

10 Q. Were you successful in that case?

A. Yes, we were, both on the appeal. But we
took the case to court, she refused to drive a bus because
being a very heavy woman she could not...these were new busses,
her school bus, these were new busses...and she could not put
her foot from the accelerator to the brake without hitting the
15 wheel. We required the owner to put in the old seats. The
new seats, being more modern, were bucket seats and she couldn't
get it far enough back, she was so heavy, in the seat, and
therefore she felt it was a dangerous situation to drive the
bus not being able to put her foot on the brake.

20 We agreed that it was a simple matter of putting
in the old seats for her, and we won that both on the magistrate
and the appeal level.

Q. That speaks to what I understand is the
underlying, one of the underlying presumptions of your
legislation, which is it's the workplace that needs regulation
25 rather than the worker?

A. Yes.

Q. In that case, you have worker...you know, it's
the workplace that needs to be amended?

A. That's correct, yes.

30 Q. Mr. McCombie, when he asked you that question,
as a preamble said that he was going to ask you the reverse question

Q. (cont'd.) of the one which was typically asked about it being abused by workers.

5 As I understand your description of how this works, when Mr. Laskin was speaking to you, you indicated that it is the worker's own personal belief as to the hazard that is the level of judgement that is involved?

A. Initially, yes, that's true.

10 Q. And he need only have that judgement confirmed by one of the committee members?

A. Yes, that's true, too.

15 Q. Can you tell me, since Mr. McCombie didn't actually ask you the question, I don't think it has been asked this morning, have you had any complaints about abuse on the other side now? We have talked about the employers' side, on the workers' side. Have employers complained that in fact workers are abusing this right?

20 A. Rarely. We did have a case where...I'll just use concrete examples...we had a firefighter in the City of Saskatoon that refused to climb up a ladder during practice drills, on the basis that it was too windy.

25 The committee was unanimous in support of the fact that he should have done this particular exercise. The worker continued to refuse, and the inspector informed me of the matter because they were unanimous, the committee, and I upheld the firefighter in this matter, and the committee had to deal with it and they came up at least with some rules and guidelines under what conditions they will do particular exercises.

30 So it was satisfactorily resolved, but the commissioner and others in the first instance felt that no one should make the judgement, ultimately, beyond that of the committee. Hence, they felt there was an excessive interference

5 A. (cont'd.) by someone who didn't know anything about firefighting. So that was a complaint, but it resolved itself quite well in that matter.

Q. Just to come back to the first part of the answer. As I understand it, you have had complaints of abuse, although they are rare?

A. Yes.

10 Q. This is going to seem unnecessarily simplistic, but let me just say to you at the outset that I do not practice in the area of labour law and I have almost no knowledge of what happens there, but it seems self-evident to me, and I don't know whether you will agree, that when I hear about the postal strikes and INCO strikes and everything else, that the general tendency of the relationship between unions and management is an
15 adversarial one. Is that a fair assessment?

A. Yes, I think so.

20 Q. Having regard to that, at least history of the relationship, and I don't want to speculate how it might happen in the future, and having regard to the fact that it really only takes two workers to, in effect, push this matter all the way...push a matter of a right to refuse all the way to the court system, as I understood your answer to Mr. Laskin... would you agree with me that it is at least possible that there may be some form of abuse with this system?

25 A. Well, I have to agree with the way you phrased the question - is there a possibility of abuse. Yes, I would have to say that in all areas of society and so forth and so on. I'm sure there are cheaters of the welfare system as well. I don't know what percent, but if it's one or two percent, they wouldn't sort of scrap it.

30 I would have to , in the abstract, answer you yes, in the abstract.

5 A. (cont'd.) The problem is, you see, that that is not what emerges in the workplace. I mean, the reality is really quite different, what goes on on shop floors.

This is not to blame anybody. I mean, when you say adversary, we ought to also be concrete. I was called into a case where an employer pointed to a worker and said he was he was soldiering. Now, it did seem he was walking across the floor rather slowly compared to others in that shop.

10 DR. UFFEN: Is that a derogatory statement, soldiering?

THE WITNESS: No. That's the word they use in industrial relations.

DR. UFFEN: I see.

15 THE WITNESS: I don't know the origins of that particular industrial relations term. You know what we mean by soldiering?

DR. UFFEN: Well, I was one for awhile, so it may not be the same as you mean it.

20 THE WITNESS: Can I retract the term? It's not intended to be offensive to the military.

DR. UFFEN: It is not intended to be, did you say?

THE WITNESS: Offensive to the military.

But it's a term that is widely used in terms of...

25 DR. UFFEN: Well, if you don't mind me objecting. Do you use the same thing for soldiering on? I grew up at a time when soldiering on was regarded as a complimentary expression. I'm a bit surprised at the...

30 THE WITNESS: This has a negative...it's a pejorative term, from the management perspective. It requires a person who is below the rate, you know what I mean, below the peaks, below the rate, below the norm. It's used so commonly by all, I've just picked it up. I should be more descriptive.

DR. UFFEN: I'm sorry, I must be uncommon then, because I haven't heard it used that way. Go ahead.

THE WITNESS: Well, I'll continue.

Now, I spoke to the worker. Now, from his perception, he said, "Listen, I'm here seven and three-quarter hours a day, I carry these beams back and forth all day. I still go home, I'm exhausted, and I go to sleep. I've adjusted a pace of work that allows me to go home and at least have a few hours with the kids."

Now, who is right and who is wrong? These are two different perceptions. There is no evil here.

I mean, you do have these perceptions that are contrary in situations. It's desirable to work it out, but I would like to clarify that in terms of adversary in the day-to-day workings of things.

Secondly, the implication that this transference of rights to workers will have a pejorative, negative or deleterious effect on industrial relations, I would argue the opposite. I would argue the opposite - that it has more...it can go farther to the amelioration of adversarial and conflict situations by releasing the frustrations at an early stage so that it doesn't become symbolized or concentrated during the economic negotiations....so the degree of frustration caused by working conditions isn't concentrated in six cents an hour, or twelve cents an hour, or the need for a strike, no matter what.

So in many ways I can see where this might ameliorate the industrial conflict and the problems of industrial relations, rather than the opposite - that it would exacerbate. That would be one I would sort of lean to.

Q. The ultimate end resolution of this difficulty is the court system, as set out in...?

A. Yes, that's correct. That's correct.

Q. I presume, again, it's self-evident that the court tends to be an adversarial situation, certainly all lawyers believe it is.

Can you indicate to me, given the fact that you want to develop out of this adversarial framework, do you think that there might be an advantage in going to something like the labour relations board to finally resolve these matters, rather than into the formalized court system?

A. Well, the situation now is to the courts. If, you know, there is pressure and there is concern, a growing concern to shift to the board, this would have to be seriously looked at and...

Q. But I'm asking from your opinion. I'm asking whether you think, given what you have said about an attempt to move away from the adversarial framework, do you think it makes sense for that to happen?

A. I don't think the labour relations board is a way of moving away from the adversarial system.

Q. Fair enough.

You said that it's your perception that workers still feared discipline, despite the presence of this kind of legislation. Is there any relationship in that between nonunion and union industries?

A. Yes.

Q. Is the problem greater or less great...

A. Yes, it's my opinion that the problem, or the fear of discipline, is greater in nonunion establishments, in general, as opposed to unionized places of employment.

Q. Is anything being done about that problem, in both union and nonunion plants?

A. Well, in terms of health and safety or in terms of reducing the fear in nonunion places? I think

A. (cont'd.) organization of workers at the unions would help.

5 Q. Well, I'm frankly more interested in the question of health than safety, but I presume that the two overlap and that maybe one of your answers is the unionization of plants, and that's fair enough.

A. No, I actually think workers are at greater risk in nonunion places of work - abstractly speaking.

10 Q. There's that word again.

A. I'm sorry you introduced it.

Q. Yes, that's right. But when I introduced it, you were prepared to suggest that abstract was so far removed from reality that it didn't have a whole lot to do with anything.

15 A. Yes, but now I feel I will indulge.

DR. DUPRE: If you would just permit a followup, counsel.

Mr. Sass, with respect to the operation of your occupational health committees, which indeed the Economic Council of Canada article that has been referred to here at tab sixteen, 20 mentioned, there are three thousand workplaces under those committees.

Roughly what percentage of those workplaces...roughly, would be nonunionized workplaces?

25 THE WITNESS: Our labour force is thirty percent organized, but I don't know if you can extrapolate from that to the committees, that's the problem.

DR. DUPRE: Because if you have a committee, there are ten or more?

30 THE WITNESS: Exactly. Of course, these smaller ones are not organized, so I would have to say a larger part of that number would be unorganized in terms of committees...even though the ten or more would cover about eighty-five percent of

THE WITNESS: (cont'd.) our work force.

5 So you would have, you know, you can just sort of figure out from those numbers...

DR. DUPRE: There still would be a healthy proportion - let's say one-fifth, one-quarter, one-third, that are nonunionized?

THE WITNESS: Yes, an unhealthy proportion.

10 DR. DUPRE: Okay. Because I guess that's the answer to my followup question which is simply, as the associate deputy minister in charge of the program, is it your observed conclusion that joint health and safety committees do not work as well in nonunionized workplaces?

THE WITNESS: Yes.

15 MR. LEDERER: Q. Mr. Sass, I would like to move just fairly quickly to the standard that you have used, which as I understand it is contained within the words 'reasonably practicable', at least within the Regulation, Part Eight.

20 That term is defined again in the Regulation at Section Two, Subsection two, subsection D, and roughly I understand it to be interpreted on the basis of some form of cost/benefit analysis. In other words, is the good that can be accomplished worth it having regard to the expense. Is that a fair assessment?

25 THE WITNESS: A. Yes. I think on the whole that's the way even the courts would interpret that phrase, yes.

Q. What are the mechanics of that? I mean, you have indicated it would be done plant by plant, but how is it done? What basis is it to determine who ultimately makes the judgement?

30 A. The regulatory agency.

Q. How? What do they do?

A. Well, if it's asbestos, then we are not as

A. (cont'd.) tolerant regarding excessive costs, or a situation that we feel workers are at great risk or hazard.

5 If the matter is less so - like a plant would say to reduce the decibels from a hundred to ninety-seven costs a hundred thousand dollars, I think we would, on the whole, shy away from that, because the difference in the noise would be indiscernible to any ear anyway.

10 So, I mean, it would just be a matter of judgements which are the collective experiences of those in the administrative agencies and the appropriate positions.

15 Q. I'm sorry. In fairness to you, I may have misled you and I may have misled the Commission, and if I did, Mr. Commissioner, I apologize. That phrase, reasonably practicable, is found within Part Eight of the Regulation, which applies to chemical substances. It does not, as I understand it, apply to asbestos where the word practicable is the only word used, and it's not...you don't see as a precursor the word 'reasonably', and that's in Section Eleven.

20 A. Well, the term is different under each section, as you see in the Health Regulations. It depends on the substance we are talking about.

But, the term is originally used under Section Three of the Act itself, that the employer must assure as far as is reasonable and practicable a health and safe workplace.

25 Then it breaks down throughout the Regulations, depending on our assessment of the hazard.

That's correct. These are judgemental things, yes.

Q. Now, as I understand it, the process which you have in place relies on stop orders and control orders rather than prosecution. Is that correct?

30 A. Yes. Yes, on the whole that's true.

Q. Does prosecution have any place to play,

Q. (cont'd.) sorry, any role to play in this system?

5 A. Yes. It's important that these penalty clauses are in the Act because generally speaking our employers, as I mentioned earlier, are reluctant to go to the courts, and this, of course, is a great pressure on them to resolve the problem at lower levels.

10 Q. I am actually more interested in the problem that would confront the government if it chose to go to court and prosecute here. Would you agree with me that proving to the courts that something is practicable would require a great deal of technical evidence, and would frankly be a lot harder to do than meeting some absolute standards, a numerical standard?

15 A. It depends on the judge, the case we put together, but the final decision to go to court does not rest with the lawyers. It rests with the branch. The Attorney-General only handles the case.

20 Q. Fair enough, but that's not the point. I am interested in the problem that would then confront the lawyer, the decision having been made.

Let me ask you, have you ever been to the court to test whether some proposal is practicable in the context of asbestos, or reasonably practicable...

A. No.

25 Q. So that issue has not been tested?

A. No, we have not tested that. That's correct. Why should we?

Q. Well, I'll take that as a rhetorical question, since today I'm the questioner.

30 A. No, what would be the argument for doing that - education purposes?

Q. There certainly are arguments, but I really

Q. (cont'd.) don't choose to get in an argument now.

A. Okay.

Q. One issue, one other remaining issue that I want to raise with you is the question of medical surveillance, which is covered both in the Act and separately in the Regulations, as I understand it. Is that correct?

A. Yes.

Q. It would appear that medical surveillance is not compulsory, that under the Act the medical...sorry, the occupational health officer can request that medical surveillance take place, although the worker can refuse to take part, and under the Regulations, the worker can ask to take part in such a program. But there is nothing that compels the worker to subject himself to ...?

A. Yes, that's correct. That's correct.

Q. And there is nothing that compels, similarly, the employer to undertake that kind of program?

A. Well, we can compel them.

Q. Under the Act or the...?

A. That's correct, under the Act. But you are correct about the first part, yes. That's correct.

We also have the right to establish a health service, which of course can be synonymous with medical surveillance, but we can require that.

Q. Would it be...can you conceive of a situation where it would make sense that in fact medical surveillance be compulsory on the worker as well as...?

A. Yes, I can conceive of it, yes.

Q. Okay.

DR. MUSTARD: Excuse me. Could you give me an example?

5 THE WITNESS: I think the hoistmen in our mines, potash mines. I think they should...I mean, I think they should not be subject to heart problems, blackouts, or something like that. That medicals should be specific in those kinds of things. Yes, I think so. They are carrying up too many men all day, you know, and I think if there is some kind of subject to blackouts and things like that, yes. I can see that...to be specific.

10 DR. MUSTARD: Would that be physical examination as opposed to medical surveillance?

THE WITNESS: Well, in the first instance it would be medical, medical examination, yes. Pre-medical in that particular case, it would be...yes, I can see that.

15 There may be others. I am just using that as an example. I would want to see our hoistmen, in potash, oh, yes.

DR. UFFEN: You mentioned the bus driver case earlier on. Would that be another example? The driver is responsible for the lives of a lot of other people.

20 THE WITNESS: Yes, I think that there would be instances, sure. Sure.

25 I would just be more worried that you don't extend it to other things, you know what I mean, to make it a complete medical, rather than specific to the nature of the work itself. Otherwise you would be excluding handicapped from many kinds of operations they can really do, and so forth.

But, yes, I can see the use of it.

MR. LEDERER: Thank you, Mr. Chairman.

DR. DUPRE: Thank you, Mr. Lederer.

Dr. Uffen? Dr. Mustard?

30 I just have one question, Mr. Sass, and I guess I'm trying to...like Mr. Lederer was...test the extent to which

DR. DUPRE: (cont'd.) the Manga/Reschenthaler report should be looked upon as reliable.

5 If you look at page 209, there is a paragraph there that I would like to just run past you.

THE WITNESS: Sure.

DR. DUPRE: It's the paragraph that starts at the top of the page:

10 "In setting new regulations, the division uses a review process similar to that of British Columbia. However, public hearings have not been held prior to the adoption of standards. Rather, drafts are circulated to the relevant interest groups. An advisory occupational health and safety council is provided for in the
15 legislation. This council reviews and approves all regulations".

Let me ask you, for example, whether I should take that paragraph as meaning that the various workplace contamination limits that are found in Appendix Six to your Regulations...

20 THE WITNESS: That's correct, yes.

DR. DUPRE: ...were basically arrived at as a result of the kind of process that is described here?

THE WITNESS: Yes, I think that...

DR. DUPRE: In other words, there were no public hearings, but parties were able to submit briefs and in the final
25 analysis the numbers that emerged were the numbers that the advisory occupational health and safety council advised the minister to put into force?

THE WITNESS: Approves is incorrect, of course.

DR. DUPRE: Pardon?

30 THE WITNESS: The word 'approves' is incorrect, in the final sentence, the last sentence: "This council reviews

THE WITNESS: (cont'd.) and approves". This is not final say, of course. It makes recommendations.

5 DR. DUPRE: Right. It recommends to the minister.

THE WITNESS: Of course. You don't approve. Cabinet...or the legislative review council has that authority to do that, but certainly not this advisory council.

I think this paragraph, on the whole, is correct.

10 DR. DUPRE: And it would, taken as is, describe to me how the numbers in Appendix Six were arrived at?

THE WITNESS: Well, I would say yes, but clearly the menu was internal. The original...I mean, it wasn't just that people got together with a blank slate and started to put in numbers. The branch itself prepared the drafts, and then we met and went over each of the items with groups that had an interest, and would have had an interest.

15 Then we would meet with them. We didn't just send out this regulation. We sent it out first, but there were also a series of meetings.

20 DR. DUPRE: Oh, but it says that these meetings were not public hearings?

THE WITNESS: No, they were not public hearings. They were meetings with these groups - the chambers, the special committee of management for industry and commerce, IPSCO would be separate even though it's one single employer - we would have a separate meeting with that, it's the largest part of it, with leaders of the Crown's...there are other, I couldn't tell you the names.

25 DR. DUPRE: It's your branch that holds the closed hearings, not the advisory committee?

30 THE WITNESS: That's correct. But the advisory committee members, which is tripartheid, was also representative of industry. They are not in itself, you know what I mean,

THE WITNESS: (cont'd.) self-contained. They have to bring it back to their constituents and that's how the safety council gets involved in agricultural areas, the different labour, construction, industrial, service, were represented as well.

DR. DUPRE: Has this process proven to be time consuming, if you think of the amount of time that may be required to get a substance into Appendix Six, with a number next to it?

THE WITNESS: It is time consuming insofar as it takes time. But it's educational as well, and it's a kind of way of getting the regulations also discussed, and things begin to happen even before the regulations, as a result of that.

So I would say...

DR. DUPRE: I'm just wondering, is it time consuming in the sense that it takes time - like two years or three years - to get a substance in here with a number next to it, or is it time consuming in the sense that it may take six months to a year?

THE WITNESS: Well, if it's a single substance, it wouldn't take very long. But if we are looking at the whole of our health and safety regulations, yes, that takes longer because they need time to study it and set up the meeting, and time to get prepared for it.

Yes. So the recent health committee regulations did take a much longer period of time, but to deal with a substance, no, we would do that, simply direct an order-in-council as part of our responsibility in regulating.

DR. DUPRE: Can I ask you this? Can I take it that the same kind of process precedes a substance being named in Appendix Five, where there is no workplace contamination limit?

THE WITNESS: It's hard to know. If it's a matter of wide interest and so on, we may go through that process. If it's a matter that we feel there is a great danger and things have to be done about it, we would move as quickly as possible right through the regulatory agency, legislative review...yes.

DR. DUPRE: And you can move as rapidly as you want on both Appendix Five and Six?

THE WITNESS: That's correct.

DR. DUPRE: Okay.

THE WITNESS: Yes.

DR. DUPRE: Now, taking at this point that simply the difference between Appendix Five is that there you name a substance but don't bother with the workplace contamination, whereas in the second instance, you would have a workplace contamination.

If a regular process, as opposed to a speeded-up process is being used, do you find or have you found that it's as time consuming or less time consuming to get a substance into Appendix Five with no number, as opposed to getting a substance into Appendix Six?

THE WITNESS: I have no experience in that area. We brought it up together and we got it through together, so I really can't answer. What may happen now, I'll learn.

DR. DUPRE: Counsel, did you have any more questions?

MR. LASKIN: No, Mr. Chairman.

DR. DUPRE: Well, may I, Mr. Sass, thank you very, very much for spending this morning with us. We are most grateful to you. Thank you.

THE WITNESS: Thank you.

DR. DUPRE: And we resume at two-fifteen, counsel, is that correct?

MR. LASKIN: Yes.

5 THE INQUIRY RECESSED

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THE FOREGOING WAS PREPARED
FROM THE TAPED RECORDINGS
OF THE INQUIRY PROCEEDINGS

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Edwina Macht
EDWINA MACHT

(REPORTER'S NOTE: See Volume 40 B for afternoon's proceedings)

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